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THE

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CURRENT TOPICS

Judicial Appointments

LORD GUEST has been appointed a Lord of Appeal in Ordinary to replace LORD KEITH OF AVONHOLM, who has resigned. Lord Guest, who is fifty-nine, was called to the Scots Bar in 1925 and took silk in 1945. He was Dean of the Faculty of Advocates from 1955 to 1957, when he became a Senator of the College of Justice in Scotland. Lord Keith, who is seventy-four, has been a Lord of Appeal in Ordinary since 1953. Three new Lords Justices of Appeal have been appointed. They are Sir HAROLD DANCKWERTS, Sir COLIN PEARSON and Sir ARTHIAN DAVIES, first appointed to the High Court bench in 1949, 1951 and 1952 respectively. We wish continued success to the promoted judges and happiness to Lord Keith in his retirement.

Pyrrhic Victories

PESSIMISTS have observed that by removing one injustice we frequently create another. The recent extension of legal aid to appeals in the House of Lords has exposed the successful unassisted opponents of assisted persons to even greater hazards than before, and may emphasise an injustice which has always existed. The Standing Orders of the House of Lords require appellants to give security for costs, but it would clearly be absurd to give an appellant legal aid with one hand and demand security for costs with the other. The Standing Orders have therefore been amended so as to provide that no security is required from an assisted appellant; thereby the position of unassisted respondents has been substantially worsened because, although no security has been demanded from poor persons, the number of assisted appellants will be greater. We recognise that it is asking too much to expect the Government to accept at one fell swoop the principle that the Legal Aid Fund should pay the costs of all successful unassisted parties in every court, although the estimated annual cost of so doing for High Court cases alone is only in the region of £200,000 a year, which we do not regard as an excessive price for simple justice. As a beginning we suggest that either the Standing Orders revert to what they were and that the Legal Aid Fund give the necessary security or possibly that all parties to appeals in the House of Lords be entitled to legal aid as nil contributors if they wish (without the 10 per cent. discount!). We are encouraged by the LORD CHANCELLOR'S statement that he is going to reconsider the matter in the light of information from a survey which is being made in the Court of Appeal: we hope that this consideration will be of wide and long range and that the Government will accept the principle that the Legal Aid Fund should pay costs, even if we must accept the application of that principle by instalments.

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Disclosing the Whereabouts

A FEW weeks ago we drew attention to s. 232 of the Road Traffic Act, 1960, under which the owner of a vehicle may be required to give information as to the identity of the driver of that vehicle at a time at which an offence is alleged to have been committed ("Identifying the Driver," 104 SOL. J. 920). The Hire-Purchase Act, 1938, contains a somewhat similar provision. Under s. 7 (1) of that Act, where by virtue of a hire-purchase agreement a hirer is under a duty to keep the goods comprised in the agreement in his possession or control, he must, "on receipt of a request in writing from the owner, inform the owner where the goods are at the time when the information is given or, if it is sent by post, at the time of posting." Failure without reasonable cause to give such information within fourteen days renders the hirer liable to a fine not exceeding £10 (ibid., s. 7 (2)), and these provisions were applied in a recent case at Bewdley Magistrates' Court. A person had obtained a television set under a hire-purchase agreement and a hire-purchase finance company had requested information as to its whereabouts. This information was withheld and the magistrates imposed a fine of £3, with £8 2s. costs.

False Trade Description

EVERY person who sells, or exposes for, or has in his possession for, sale, or any purpose of trade or manufacture, any goods or things to which, *inter alia*, a false trade description is applied, is guilty of an offence: s. 2 (2) of the Merchandise Marks Act, 1887. In *R.* v. *Epsom Justices; ex parte Dawnier Motors, Ltd.* [1960] 3 W.L.R. 873, some persons were convicted of an offence under this section because a cash sales receipt stated that they had sold 4 gallons of petrol whereas they had actually sold 3 gallons and 4¼ pints, and in *Longstaff and Lawrence* v. *Hedley* [1960] Crim. L.R. 438, an agricultural haulage contractor was convicted of the same offence. It was shown that he had applied a false trade description to goods in that he alleged that a load of manure weighed 8 tons 6 cwt. whereas in fact it weighed 4 tons 7 cwt. In a recent case in Birmingham a jeweller was charged with the offence of applying false trade descriptions to jewellery. It seems that four rings were described as "platinum and gold" and, although they were certainly gold, there was no more than a "minute" quantity of platinum on the discs into which the stones were set. For the defence it was urged that it would be dangerous to hold that there was a false trade description merely because the quantity of platinum in the rings was "minute," but the stipendiary magistrate, Mr. J. F. WILWARD, ruled that an offence had been committed. Section 2 (2) of the 1887 Act provides that it shall be a defence for a person to show (*a*) that, having taken all reasonable precautions, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade description; and (*b*) that on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained the goods; or (*c*) that otherwise he had acted innocently. However, exceptions (*a*) and (*b*) apply only to cases where the goods in question were sold with the false trade description already applied to them and not to cases where it was applied on the occasion of the sale, and exception (*c*) applies only where the defendant had acted inadvertently or under some mistake of fact: *Slatcher* v. *George Mence Smith, Ltd.* [1951] 2 K.B. 631.

Choice of Matrimonial Home

IT is not a proposition of English law that a husband has the right to say where the matrimonial home should be: it is nothing more than "a proposition of ordinary good sense arising from the fact that the husband is usually the wage earner and has to live near his work" (per DENNING, L.J., in *Dunn* v. *Dunn* [1949] P. 98). It follows that a wife who refuses to move to a new home is not necessarily in desertion, and this point was underlined in *Jameson* v. *Jameson*, a recent case in the Court of Appeal. The marriage was in 1950 and there were no children. At the material time the wife was a well-paid shop manageress who was fond of dancing, parties and a gay life and she had a circle of friends whom she did not wish to leave. Her husband was quiet and studious and, in order to gain experience and obtain promotion, he had held ten positions in six years. In 1956 the wife refused to move from Stevenage to Chipping Sodbury, where her husband had obtained a post, but their lordships held that she had not thereby deserted him as, in the circumstances of the case, her refusal was reasonable. As HODSON, J., said in *McGowan* v. *McGowan* [1948] 2 All E.R. 1032, neither the husband nor the wife "has, as a matter of law, the right to choose the matrimonial home."

Rating and Valuation Reporter

WE welcome the appearance of the first issue of the *Rating and Valuation Reporter*, which was published yesterday. This periodical succeeds *Rating and Income Tax*, whose proprietors announced the change in November because of their view that the interests of the great majority of its readers would be better served by extending the paper's scope to include the valuation of land, not only for rating purposes, but also in its broader aspects. All reportable rating cases are still to be included and in addition reports of cases concerning such subjects as compensation on compulsory acquisition, planning compensation and valuation for estate duty. Space for the additional subjects is being found by the exclusion of matters in the field of income tax now more extensively covered elsewhere. The difficulties facing publishers aiming to satisfy the needs of specialists by high-quality production are well known, and we can only wish success to the *Rating and Valuation Reporter* and hope that it will be supported to the full by those interested in its field.

Reminder

THE arrival of 1961 was followed by the coming into force of a variety of Acts and regulations. A selection of these is set out on p. 19 of this issue. We have already made reference to many of them in articles and current topics. In particular we would draw attention to the provisions of the Betting and Gaming Act, 1960, legalising "one-armed bandits" in clubs and amusements with prizes at dinners, etc. (104 SOL. J. 1065); to the Charities Act, 1960, with its official register now available for new charities (104 SOL. J. 337, 359, 756, 775, 798 and 1008); to the Matrimonial Proceedings (Magistrates' Courts) Act, 1960, which increased the maximum weekly maintenance payments which a magistrates' court may order (104 SOL. J. 712, 837 and 1041); and to the extension of compulsory registration of title to the whole of the county of Kent.

NOTARIES PUBLIC—I

To many solicitors a notary public is *rara avis*, useful in commercial matters and those concerning property overseas, and often hard to find. There are upwards of 600 notaries in England and Wales whose names and addresses can be found in the "Law List." A few notaries are ecclesiastical notaries, competent to act only in ecclesiastical matters, a few are members of the Scriveners' Company who are exclusively entitled to practise in the London area and who have before admission to undergo the rigours of examination. The vast majority are provincial notaries almost all of whom are also solicitors, some of whom by virtue of their appointments (technically called faculties) being general are entitled to practise anywhere in England and Wales outside the exclusive area of the Scriveners, whilst others, who must be solicitors, hold only a district faculty permitting them to practise within a prescribed area.

Derivation of the office

Historically the office of a notary public derives from the scribe of biblical times. Until the Reformation his appointment was a papal matter. Henry VIII is said to have overlooked the commercial need for notaries until some years after his breach with Rome. Ultimately by the statute 25 Henry VIII, c. 21 (1533), he delegated the power of notarial appointment to Archbishop Cranmer. To this day that task is performed by the Primate acting through the Master of his Court of Faculties. In consequence of the disestablishment of the Welsh Church, however, the appointment of Welsh district notaries is made by the Clerk of the Crown in Chancery. In Scotland royal authority to create civil notaries was taken earlier, in 1469, but it has nowadays become the business of the judiciary, without ecclesiastical intervention.

Appointment

Parliament has regulated the appointment of notaries by Acts of 1801, 1833, 1843, 1946 and 1959. General notaries, including those who are scriveners, are required to have been bound by a contract in writing or by contract of apprenticeship to serve as clerk or apprentice to a practising notary for not less than seven years (for scriveners) or five years (for the others). Oddly the articles or apprenticeship contract do not have to be between the clerk and a general notary. His master may be a district notary. A district notary is appointed on proof to the Master of the Faculties of the applicant's personal fitness and of local need.

Since the evidence of personal fitness of an applicant has to be provided by the notaries practising in the district for which the applicant seeks his own appointment, the profession as such seems to have considerable powers of control. In addition there is a right given to other notaries practising in the applicant's district to oppose, and there is a surprisingly large number of reported cases about such oppositions, particularly in the latter years of the last and the early years of this century. Professional jealousy may have sought to preserve a very closed shop.

Ayliffe in his Parergon throws some light upon the likely meaning of "personal fitness." The notary "ought to be a person of trust and fidelity . . . a person of some worth and dignity . . . a person well instructed in his business, adroit in framing acts, and taking the examination of witnesses . . ." As to the manner of performing his duties, the writer continues: "He ought upon demand or request made to him to record all such things as he shall see and hear belonging to his office (for on these two corporeal senses his business turns), to make all acts and instruments without diminution of truth, and not erase any words from the records he has in his possession. Yea, he ought to keep all things committed to his trust as the apple of his eye, and not reveal any secrets enjoined him."

Almost every notary who practises today in England and Wales is a solicitor. This thought may encourage those whose duties concern the selection of solicitors' articled clerks, their training and their examination. Their protégés must have developed or inherited the necessary personal fitness. Unlike some notaries abroad (who have a term licence), a notary in England and Wales remains a notary until his death or until his name is struck off the roll. Striking off is a power exercised by the Master of the Faculties for misconduct or other good cause. Annually, however, the notary has to have his practising certificate entered at the faculty office.

Bodies governing notaries

There are three bodies variously concerned with the interests of notaries. London notaries have their own Society of Public Notaries of London (1 and 2 Great Winchester Street, London, E.C.2) and those who practise within the City or within the circuit of three miles from it have to be members of the Scriveners' Company, more fully styled "The Master and Wardens, and Assistants of the Society of Scriveners in the City of London." For provincial notaries their association is the Incorporated Society of Provincial Notaries Public of England and Wales, with offices at 7 Hampshire Terrace in Portsmouth. The Scriveners and the London society are necessarily small in membership. Vast as the Metropolis is, the "Law List" contains the names of few more than a score of public notaries in London. Their work is necessarily far more concentrated, because of the international commerce there, than that of their provincial brethren. Conversely notarial practice cannot of itself provide a living for the solicitor who is also a notary in the provinces. Much of the work that could be done under the notarial umbrella is customarily done by the practitioner *qua* solicitor rather than *qua* notary. The provincial society, however, is about 600 strong, and is governed by a council of twenty-four members, whose functions include, quoting from the society's memorandum of association registered in 1907, "to protect maintain and foster the privileges rights and interests of Provincial Notaries; to decide on disputed points of practice, professional usage or courtesy; to cultivate uniformity of practice and procedure and to ensure honourable practice and to suppress malpractice."

That memorandum, however, contains an express saving for the rights and practices of the London society and of the Scriveners' Company, so technically there is a clear separation between them. In practice there is a liaison between the London and provincial societies. Council opinions of the provincial society about points of practice are issued regularly to members, and fees recommended to be taken for different items of notarial work are promulgated. The Law Society kindly makes its hall available for annual and council meetings.

(To be continued) G. E. DELAFIELD.

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TAXATION OF BENEFITS IN KIND

THIS subject may be considered under three heads: (i) what benefits are taxable, (ii) when they become taxable, and (iii) how they are to be valued if tax is exigible. The second of these questions usually arises in connection with share options which pose the problem whether the option is to be taxed for the year in which it is granted or the year in which it is exercised. This matter was discussed under the title "Share Options as Perquisites," 104 SOL. J. 518, and the present article is accordingly concerned only with heads (i) and (iii), the latter of which has acquired a topical interest by reason of the decision of Danckwerts, J., in *Wilkins* (*Inspector of Taxes*) v. *Rogerson* [1960] 2 W.L.R. 515; 104 SOL. J. 288 (which concerns the taxable value of a gift of a suit of clothes to an employee). The Court of Appeal has now affirmed this decision (1960), *The Times*, 14th December.

Section 156 of the Income Tax Act, 1952, as amended by s. 10 of the Finance Act, 1956, provides that tax under Schedule E shall be charged in respect of any office or employment on emoluments therefrom, while para. 1 of Sched. II to the Act of 1956 provides that the expression "emoluments" shall include "all salaries, fees, wages, perquisites and profits whatsoever." Emoluments of employment, however, are only assessable if they consist of money or that which can be turned to pecuniary account (per Lord Watson in *Tennant* v. *Smith* (*Surveyor of Taxes*) (1892), 3 T.C. 158). In that case a Scottish banking company assigned to its agent (manager) as a residence a portion of the bank premises occupied by them in which the agent was required to reside for the proper performance of his duties. It was held that the value of the residence was not an emolument of the agent's office. But if the benefit is in satisfaction of a pecuniary obligation which the employee has incurred, it is assessable as "money's worth" even though the employee may be unable to convert the benefit into money. Thus, in *Nicoll* (*Inspector of Taxes*) v. *Austin* (1935), 19 T.C. 531, a company undertook to pay rates, taxes and other outgoings in respect of the residence occupied by its managing director, which residence the company had requested him to continue to occupy for the convenience and prestige of its business. In that case the outgoings so paid were held to be emoluments of the managing director. Similarly, if an employee is paid a cash allowance in lieu of benefits in kind, the amount forms part of his emoluments, even if he is under a contractual obligation to apply it in a particular way. Hence, whilst the provision of board and lodging does not attract tax, a cash allowance given in lieu thereof is assessable: *Machon* (*Inspector of Taxes*) v. *McLoughlin* (1926), 11 T.C. 83.

Meal vouchers for a reasonable amount per employee, usable at named restaurants, are not assessable as income, but an allowance in cash for meals is assessable without any deduction for the cost of the meals: *Sanderson* (*Inspector of Taxes*) v. *Durbridge* (1955), 36 T.C. 239. For 1959–60 and subsequent years, however, the value of any voucher or part of a voucher which does not comply with the following conditions is taxed: (*a*) the vouchers must be non-transferable and used for meals only; (*b*) where any restriction is placed on their issue to employees they must be available to lower paid staff; and (*c*) the value of vouchers issued to employees must not exceed 3s. per employee for each working day (Inland Revenue Extra-Statutory Concessions, 1959).

Special provisions

Under chap. II of Pt. VI of the Act of 1952 special provisions apply to company directors and senior employees. As a general rule, where the taxpayer is a director of a company (as defined in s. 163), or an employee of a company, partnership or individual who is in receipt of emoluments at the rate of £2,000 a year or more, expenses allowances and benefits in kind are to be treated as emoluments assessable under Schedule E, subject to any claim which the director or employee may be able to make under the restricted provisions of para. 7 of Sched. IX to the Act in respect of expenses wholly, exclusively and *necessarily* incurred in the performance of his duties. Excepted from this general rule, *inter alia*, are (*a*) accommodation, supplies or services provided for the director or employee in the employer's business premises and used by him solely in performing his duties; (*b*) the provision in the employer's business premises (in certain circumstances) of living accommodation for an employee (but not a director) who is required by the terms of his employment to reside in the accommodation for the purpose of enabling him properly to perform his duties; (*c*) the provision of meals in a staff canteen; and (*d*) the provision of death or retirement benefits. Extra-statutory concessions carry these exceptions further. Where the benefit assessable consists of a rent-free house, the director or employee is chargeable on the annual value of the rent paid by the employer (restricted in the case of old-fashioned and too large houses) and on rates and other expenses borne by the employer; and exception (*b*) is also allowed in the case of a full-time director of a company whose beneficial shareholding does not exceed 5 per cent. of the ordinary share capital of the company and whose emoluments and benefits do not exceed £2,000 per annum.

Valuation of benefits in kind

Section 162 of the Act of 1952 deals with the valuation of benefits in kind assessable under chap. II of Pt. VI. For example, any asset transferred to an employee which has been used or depreciated since it was acquired by the employer is to be valued as at the date of transfer. Where living or other accommodation is provided by an employer who himself pays no rent for it, or a rent less than the Schedule A net annual value, the latter figure is deemed to be an expense incurred in providing the benefit for the employee; and where an asset, other than premises in respect of which the employer is assessed under Schedule A, is used to provide a benefit for an employee although it continues to belong to the employer, the annual value of the use of the asset is the measure of expense incurred by the employer.

Generally speaking, if some material but unsaleable benefit is given to an employee, he receives that benefit without being taxed on it; but if he is given a saleable benefit or money with which to provide himself with a benefit, it is taxed. Employers frequently seek to encourage the services of their employees by supplying benefits in kind, and if the benefit is small no difficulty arises since the Revenue does not normally assess amounts up to £5. Over this amount difficulty may arise in deciding the proper valuation to be placed on the benefit.

A suit of clothes

Such a problem came before the court in *Wilkins* v. *Rogerson*, *supra*, which was described by leading counsel for the Crown as a test case on the question of principle as to

the basis on which a cash payment made to a third party for the benefit of an employee gave rise to liability to tax on the part of the employee. In that case a company decided to give its male staff (other than executives) the choice of a suit, overcoat or raincoat, suitable for business wear and not exceeding £15 in price, as a Christmas present. The clothes were to be provided by a named tailor who was given the names of the employees concerned and instructed by the company that the bill would be paid by it and that no cash payment either way could be made between £15 and the actual cost of the clothes in a particular case. No condition was imposed requiring an employee to make a refund to the company if he left its employment before the suit or other article was worn out, nor was an employee expressly forbidden to sell the clothing provided, although the employers would have been displeased had any attempt to do so been made. The taxpayer chose and received a suit costing £14 15s., and this sum was included in an assessment under Schedule E made on him for the year 1955–56 as part of the perquisites or profits arising from his employment. The Special Commissioners held that the amount to be included in the assessment was not £14 15s. but the value of the suit in the taxpayer's hands on the footing that he could immediately have sold it only as second-hand, which value was agreed at £5. The Crown appealed.

The taxpayer's pocket

Danckwerts, J., said that the decision of the Commissioners was correct. Reliance had been placed by the Inland Revenue on such cases as *Nicoll* v. *Austin*, *supra*, but there it was not possible to measure the value of what the employee received except by taking the amount of the payment which had been made for the purpose of conferring the advantage upon him. When it could be seen that the employee had received something which was in his hands as a result of the transaction which had been carried out, the amount of the profit which accrued to the employee was the value of what he had received, and in *Tennant* v. *Smith*, *supra*, Lord Macnaghten had said that a person was chargeable to income tax under Schedules D and E "not on what saves his pocket, but on what goes into his pocket." The Commissioners had rightly based their decision upon such cases as *Weight* (*Inspector of Taxes*) v. *Salmon* (1935), 19 T.C. 174, and *Ede* (*Inspector of Taxes*) v. *Wilson and Cornwall* (1945), 26 T.C. 381 (see 104 Sol. J. 518), and the benefit which the taxpayer received was the second-hand value of the suit in his hands. His lordship said, however, that if the taxpayer had been told to go to the named tailor and order the suit and pay for it, and had been promised that the company would then reimburse him the amount which he had paid, the benefit which he would have obtained would have been the amount paid to him by the company as reimbursement of his expenditure (cf. *Fergusson* v. *Noble* (1919), 7 T.C. 176). It was quite true that a different result was produced according to the way in which the transaction was carried out, "but, certainly, having regard to one's tax experience," nothing was more common than to find such a situation. In the circumstances of the case, the amount to be added to the respondent's taxable income for Schedule E was the sum of £5, and the Crown's appeal would be dismissed.

It can, of course, be that a benefit in kind constitutes a non-taxable gift, as being a personal testimonial to the employee, but such a consideration is outside the scope of this article.

Court of Appeal's decision

In the Court of Appeal, Lord Evershed, M.R., said that although the company made the taxpayer a written "offer" of a suit of clothes which the taxpayer accepted, the offer was not to be construed in the sense in which it would be used in a legal context, as giving the acceptor some right against the employer. In fact, the taxpayer never acquired any rights against anyone. He had no right against the company and no right in the suit until he actually received it. What was assessable was its value when he got it. The case was distinguishable from *Austin's* case, *supra*, and also from *Hartland* v. *Diggines* (1926), 10 T.C. 247, where it was held that an employee's tax paid by his employer must be treated within the scope of Schedule E.

Donovan, L.J., said that in both the above cases it was the money liabilities of the employed officer which were discharged by the employer, so that what the officers were really taxed on was the money's worth of immunity given from their own liabilities. No valuation of that money's worth was required as it was obviously of the same value as the liability which had been discharged. In the instant case there was no privity of contract between the taxpayer and the tailors, and when the company paid the tailors it discharged its own liability and no one else's. That being so, his lordship could discover no test which yielded the result that the payment to the tailors became the income of the employee. Therefore, one got back to the basis of liability of Schedule E, namely, what were the profits or gains —whether in money or money's worth—which arose or accrued to the taxpayer as the holder of an office of employment. The suit—and the suit alone—acquired the description of profit accruing to the employee from his employment; and on that basis it should be assessed at its money value in the taxpayer's hand, which was what he could get for it if he sold it as soon as he received it.

The court refused leave to appeal to the House of Lords, but Lord Evershed said that in a case of this kind it seemed a pity that the parties could not omit the stage of the Court of Appeal and go straight to the House of Lords.

K. B. Edwards.

Honours and Appointments

Mr. Diarmaid William Conroy, Solicitor-General, Kenya, has been appointed Chief Justice, Northern Rhodesia, in succession to Sir George Paterson, who is retiring.

Mr. Alastair Lorimer Cram, Senior Resident Magistrate, Kenya, has been appointed a Puisne Judge, Nyasaland.

Mr. Victor Albert Charles Durand, Q.C., has been appointed Deputy Chairman of the Court of Quarter Sessions for the County of Warwick.

Mr. Anthony John Harris Fowler, solicitor, of Brightlingsea, Essex, has been elected Deputy of the Cinque Port Liberty of Brightlingsea.

Mr. Henry Hopkins, Town Clerk of Darlington until his retirement last year, has been appointed to act as Deputy Town Clerk during the illness of Mr. William Angus McSkimming.

Mr. Douglas Reith, Q.C., has been appointed a Deputy Commissioner for the purposes of the National Insurance Acts.

LOCAL GOVERNMENT IN GREATER LONDON

THE recommendations contained in the recently published Report of the Royal Commission on Local Government in Greater London are supported by some 370 pages of lucidly presented and logical analysis. The recommendations are, however, so far-reaching that some excuse exists for the rather cynical doubt that they will be fully implemented, at any rate in the lifetime of those in practice now. In this article, however, it will be assumed that the Commission's proposals are about to be carried into effect, and, on that hypothesis, the impact of such changes upon the solicitor in private practice will be considered.

Council for Greater London

The report recommends that "the primary unit of local government in the Greater London area should be the borough, and the borough should perform all local authority functions, except those which can only be effectively performed over the wider area of Greater London or which could be better performed over that area." Accordingly, there should be established an authority for the wider area of Greater London with the style and title of the Council for Greater London. Further, there should be established within the same area fifty-two boroughs with the style and title of Greater London Boroughs. The conception of an upper and lower tier of authorities should be discarded. The new approach should be to regard the borough as the primary unit and to confer upon the borough all functions which can be performed within its own limited area. Thus only those functions should be conferred on the Council for Greater London which can only be or can be better performed over the wider area.

This suggested reorganisation has certain obvious advantages. For the first time Greater London is clearly recognised as an entity and the implementation of the recommendations would give the area an administrative coherence that it at present lacks. At the same time there would be created a pattern of "most purposes" authorities to whom, in the first instance, a member of the public or his legal adviser would turn as of course. The simplification would be beneficial, for, in the words of the report (para. 754), "We think it is of the first importance that the people of London should know who is responsible for what, and that the respective powers and functions should be so delimited that there is no need for delegation and other administrative contrivances to which we have applied the phrase 'papering over the cracks'." It should thus be possible under the new system to avoid in many instances that rather irritating type of three-cornered correspondence which too often results under the present two-tier system with its unsatisfactory division of responsibility. The abolition under these proposals of the distinction (anachronistic in 1888) between the area of the Administrative County of Greater London and the area outside would pave the way for a uniform system of administrative technique throughout the area.

Responsibility for planning

In the field of planning, the relevant powers and functions are not readily amenable to a tidy arrangement but the proposals contained in the report would undoubtedly result in a great simplification. The distribution of functions recommended is such that each authority would have clear powers and duties within its own area. The Council for Greater London would be charged with the responsibility for the preparation of a development plan for the Greater London area. This proposal substitutes one plan for the existing nine and facilitates the inevitable reconsideration of the basic assumptions and standards of the Abercrombie plan. The proposal also obviates the difficulty which is now arising as the nine plans come up for review at different times.

Part III powers under the Town and Country Planning Act, 1947, would be conferred upon the Greater London Boroughs. This recommendation is, however, subject to certain inevitable qualifications. First, applications for planning permission which involve a departure from the development plan would be referred to the Council for Greater London. Whether or not an application involved such a departure would, however, be a matter for the borough. Secondly, all applications for the extraction of minerals would be referred to the Council for Greater London. Thirdly, there would be, designated by orders made by the Minister of Housing and Local Government, a central area and, possibly, other special planning areas, within which applications of specified kinds would be referred to the Council for Greater London. The proposed scheme seems at first sight to be a little complicated, but a careful consideration leads to the conclusion that in the greatest number of cases the applicant would be dealing with the borough and the borough alone. Preliminary discussions between the applicant and his advisers and the officers of the borough would probably be more helpful for that reason.

Bye-laws

Arising very often at the same time as the need for planning permission is the need for byelaw consent. The Commission do not comment on the respective merits of the two systems at present working in the area (of which it has been said that one involves the approval of plans and the other the approval of buildings) but recommend that one system should obtain throughout the area. Under their recommendations building byelaws and regulations would be made by the Council for Greater London and enforced by the boroughs. This is a simplification which would certainly appeal to lawyers. It is to be hoped, however, that further simplification may be achieved when consideration is given to these proposals. For example, where a proposed development involves a projection over what will subsequently be a public highway it is becoming standard practice to annex to the planning permission a condition requiring the developer to enter into an agreement regulating the treatment, etc., of the projection. Similarly, certain boroughs require developers to enter into agreements regulating the projection of foundations under the highway and seek to introduce into such agreements a condition requiring removal of the projection upon notice. The power to require such agreements is not beyond dispute, but in any event, these additional agreements are vexatious and frequently cause further protracted negotiation. These are matters which might be settled once and for all by appropriate byelaws.

Searches and inquiries

It is evident that a redistribution of functions upon the lines recommended would speed up the programme of urban renewal which will be the basic requirement of the area over the next twenty years. This spotlights another problem encountered by the solicitor in private practice—the problem of what inquiries to make to protect a client who is purchasing land. Adequate provision is made for the registration of

such matters as compulsory purchase orders, tree and building preservation orders and the like. The development plan will show certain proposals (and the programming) by definition, allocation or designation. The weak link so far as the solicitor is concerned is the proposal which has reached a mature stage in the deliberations of the relevant council but has not yet reached the definitive stage at which it would be revealed in one of the ways mentioned above. It was in part to deal with this problem that the existing forms numbered Con. 29 were devised. Most practitioners will readily agree that the forms have been helpful and that local authorities have been at pains to assist. There remains, however, a degree of uncertainty, and it is hoped that the establishment of a Council for Greater London and Greater London Boroughs will lead not merely to a redrafting of the forms but to a reconsideration of the whole problem.

D. C. H.

CONFUSION NOT FRUSTRATION?

WITH the greatest respect to Mr. Donald Harris, his article on the doctrine of Frustration (104 SOL. J. 966) appears to be based on a confusion of "why" with "when."

The general rule in the law of contract is that a party must perform his contract or be liable for the non-remote consequences of non-performance. One exception to this rule is the doctrine of frustration under which the courts may excuse a party from the consequences of non-performance.

The House of Lords in *Davis Contractors, Ltd.* v. *Fareham U.D.C.* [1956] A.C. 696, stated, in effect, that the doctrine of frustration will apply if it is found by the court that the obligations under the contract have become fundamentally different. Mr. Harris treats this as being a statement of the basis on which the doctrine of frustration rests and as a rejection of the orthodox theory of the implied term. With respect, it is surely nothing of the sort.

Begging the question

The court will intervene and excuse non-performance of a contract in the event of a fundamental change of obligation. Certainly it will, but why? To answer "Because there has been a fundamental change of obligation" is to beg the question. Such an answer only tells us in what circumstances the court will intervene, not why. It is like stating that a contract in restraint of trade is prima facie void because it is in restraint of trade, rather than because such a contract is against public policy. Or like stating that a specifically enforceable contract for the sale of land converts the vendor's interest in equity into personalty because there is a specifically enforceable contract, rather than because equity regards that as done which ought to be done.

All that a court of law really requires for a decision is to know when the doctrine of frustration is to be applied and what the consequences of applying it will be. Being bound by precedent, the court need not concern itself with the reasons behind the doctrine.

Implied term theory defended

However, since the subject of the basis of the doctrine has been brought up, it is submitted that Mr. Harris's attack on the orthodox theory of the implied term misfires in places. First, he all but ignores the fact that direct support for this theory can clearly be found in the House of Lords' decision in *British Movietonenews, Ltd.* v. *London and District Cinemas, Ltd.* [1952] A.C. 166. Second, he apparently believes that this theory involves finding the subjective intention of the parties, whereas in reality, like any other term of a contract, the implied term is to be ascertained objectively irrespective of the actual non-expressed intentions of the parties, and in this respect does not differ from the terms implied by s. 14 of the Sale of Goods Act, 1893, which is a codification of the common law. Third, the cases where a contract has been held to be frustrated despite an express provision apparently dealing with the frustrating event—Mr. Harris mentions *Metropolitan Water Board* v. *Dick, Kerr & Co.* [1918] A.C. 119, and *Bank Line, Ltd.* v. *Arthur Capel & Co.* [1919] A.C. 435—can be explained by pointing out that in each it was found as a question of construction that the express provision envisaged and dealt with a much lesser event than that which actually occurred so that room was left for an implied term. Fourth, it is submitted that only the implied term theory is consistent with the basic principle that the duty of the court is to uphold bargains not to break them. If the doctrine of frustration were to be accepted as a rule of law which automatically avoided a contract without regard to its terms, express or implied, it would be an arbitrary and unjustifiable denial of the freedom to contract, a denial of the sort normally left to statute and public policy.

Final submission

Notwithstanding the above defence of the implied term theory as being the proper basis of the doctrine of frustration, it is agreed that that theory is not satisfactory. However, this does not mean that some other theory is the proper one. Rather the fault is attributed to a lack of recognition by the courts of what happens when they apply the doctrine. It is said that when a contract is frustrated, it is therefore avoided. In reality the result of applying the doctrine, as said at the outset, is to excuse non-performance. In other words, the loss is not all to be borne by the party failing to perform. A condition precedent of the doctrine is that neither party be at fault, so that all the doctrine does is to decide in what proportions (bearing in mind the provisions of the Law Reform (Frustrated Contracts) Act, 1943) two innocent parties shall bear any loss arising from non-performance of the contract.

The final submission of this note is that the term which reasonable business men would incorporate into their contract, if they were to envisage a frustrating event, would not be that the contract was off, but would state which of them should insure against the event. It is this which the court ought to investigate objectively in the light of the surrounding circumstances, e.g., the customs of the particular trade. Failing an answer, is not equity equality?

J. T. F.

* * *

Our contributor writes :—

(1) In the *Davis Contractors* case [1956] A.C. 696, three of their lordships (a majority of the House) explicitly rejected the implied term theory (Lord Reid at pp. 720–1, Lord Radcliffe at pp. 728–9, and Lord Somervell at

p. 733, expressly agreeing with Lord Reid on "what is the proper basis of 'frustration'"). There is no need to *infer* any such rejection, nor would it have been possible if the House of Lords by a majority had previously adopted the implied term theory in a binding precedent.

(2) "Begging the question." My article was not an attempt to show *why* the courts intervene, but to examine the "basis" of frustration. The term "basis" has been used by many judges (e.g., in the *Davis Contractors* case, *supra*, by Viscount Simonds at p. 715, Lord Reid at p. 719, Lord Somervell at p. 733) and it refers to the way in which the underlying legal principle should be formulated in order to show clearly what the court may do. Although in any legal principle it is impossible to draw a rigid distinction between "why" and "when," an examination of the rule about frustration may indicate the reasons for the rule. Ultimately, however, the only answer to the question "why" in regard to any rule of law is that "it is just and convenient (or public policy demands) that there should be such a rule in the circumstances."

(3) The legal consequences of frustration do not simply "excuse non-performance," nor does the 1943 Act apportion "loss arising from *non*-performance of the contract." The Act deals with loss arising from *partial* performance before frustration, and permits recovery of advance payments (less expenses); the Act also gives a right to claim payment for any "valuable benefit" obtained by the other party before frustration.

Property Practice

DEEDS AND WORDS

CONVEYANCING practitioners are in general a conservative lot (note the small "c" in the present context). Our motto might well be "Do as you have done before"; we are never happier than when we are able to follow precedent; we are pleased in inverse proportion to the necessary alterations and additions. This is understandable and far from reprehensible. As a student, cribbing was cheating; as a practitioner, failure to crib may be professional negligence. Memories are to be trusted neither as to the law nor as to forms. Only rarely is a conveyancer met who would contemplate drafting any document without first searching for the nearest possible precedent or combination of precedents, either from past transactions in which he has acted or from one of the well-known collections of precedents.

However, a blind allegiance to precedent may be equal folly. No self-respecting draftsman should use any form of words without understanding the precise legal reason and purport. It is believed that the traditional form of conveyance which many readers will use at least daily is now so well-established that the bases on which it is established are no longer so familiar as they might be. Accordingly, it is proposed in this series to run through the traditional parts of a deed, both explaining them and indicating points of practical importance.

At the same time it is proposed to deal, by way of comparison and contrast, with the forms used for registered dispositions of registered land. After all, in many parts of the country the traditional form of conveyance of land has given way to the Land Registry transfer of land, and this is the ultimate fate of the whole country. Yet it is believed that many practitioners, even amongst those in districts to which compulsory registration of title has already spread, do not appreciate that land registration is anything more than mere machinery, and as a consequence treat the new-style conveyancing as a mere matter of filling in standard forms. This is not the true position. The Land Registration Act, 1925, also affects the principles of substantive law and provides a number of traps into which the unwary can, and do, fall.

THE COMMENCEMENT OF A DEED

What is the proper beginning of a conveyance of land? How should we describe it? The old practice was to begin with "This Indenture . . .," but now the position is that:—

> "Any deed, whether or not being an indenture, may be described (at the commencement thereof or otherwise) as a deed simply, or as a conveyance, deed of exchange, vesting deed, trust instrument, settlement, mortgage, charge, transfer of mortgage, appointment, lease or otherwise according to the nature of the transaction intended to be effected"

—s. 57 of the Law of Property Act, 1925.

Thus the practice of calling a deed by whatever name happens to be appropriate is perfectly proper.

The distinction between an indenture and a deed poll was and is that the former is a document written out in duplicate on the same parchment or paper and divided into two parts by cutting through with an irregular edge, each party retaining one part which could be fitted to the other to show its genuineness. A deed poll, on the other hand, is a deed with smooth—or "polled"—edges, i.e., not indented, and is unilateral. It used to be necessary to say which the deed was, an indenture or a deed poll, but now: "A deed between parties, to effect its objects, has the effect of an indenture though not indented or expressed to be an indenture": s. 56 (2) of the Law of Property Act, 1925.

However, this distinction between indentures and deed polls may not be of merely academic interest. It was raised by Vaisey, J., in *Chelsea and Walham Green Building Society* v. *Armstrong* [1951] Ch. 853, where he held that a Land Registry transfer is in the nature of a deed poll rather than a deed *inter partes*, from which it follows that a person who is not a party to such a transfer can sue upon a covenant contained in it. Three points were indicated (at pp. 857–8) by Vaisey, J., as indicating that a Land Registry transfer is in the nature of a deed poll: (*a*) there is no reference to parties at the beginning, (*b*) it is expressed in the first person, and (*c*) it is of a quasi-public character. The first two of these three points are questions of form, and the principles governing choice of form in Land Registry transactions will be discussed below. However, it should be noted that Denning, L.J., in *Drive Yourself Hire Co. (London), Ltd.* v. *Strutt* [1954] 1 Q.B. 250 (at p. 273), stated that the technical rule that no one could sue on an indenture unless named as a party to it had been abolished by s. 5 of the Real Property Act, 1845 (the predecessor of s. 56 (1) of the Law of Property Act, 1925), with the result that the distinction between indentures and deed polls could be treated as "old learning."

REGISTERED LAND FORMS

It may be useful to mention at this stage the principles governing choice of form on a dealing with registered land, which principles render necessary a commencement and indeed style entirely different from that of a deed not relating to registered land. In the first place, the important principle to remember is that the estate for the time being vested in the registered proprietor is only capable of being disposed of or dealt with in an authorised manner: s. 69 (4) of the Land Regisration Act, 1925. By virtue of r. 74 of the Land Registration Rules, 1925 (L.R.R.), the forms set out in the Schedule to those Rules must be used in all matters to which they refer or are capable of being applied or adapted. Any alterations or additions which are necessary or desired may be made only if allowed by the registrar. A number of additions to the scheduled forms are certainly desirable, if not also necessary, for example, a receipt clause, the appropriate words in order to introduce the covenants for title implied under ss. 76 and 77 of the Law of Property Act, 1925, and a certificate of value. These, with others, which are, in practice, always allowed by the registrar, will be discussed in later notes dealing with each particular part of deeds relating to unregistered land. However, it may be said now that the printed forms of transfer of land obtainable from H.M.S.O. (not free of charge: r. 7 of the Land Registration Rules, 1930, revoking L.R.R. 318) in fact already contain the additions mentioned above.

The Land Registration Rules incidentally provide (r. 308) for the form of documents which are to be filed otherwise than in point of content. Thus such documents (other than maps or plans) must be printed, typewritten, lithographed, or written (what else was contemplated?) on stout paper, foolscap size, and a sufficient stitching margin must be allowed so that they may be conveniently bound. This provision is not, however, strictly enforced in practice.

The scheduled forms apply to a variety of dealings with registered land. Starting at forms 19 and 20 with transfer of freehold land (whole and part respectively), they range via forms relating to settled land (forms 21–24), mines and minerals (forms 25–30), the exercise of a power of sale contained in a registered charge (form 31), leasehold land (forms 32–34), companies (form 35), charities (form 36), small holdings (forms 37–39), the imposition of restrictive covenants (form 43), exchanges (form 44), to forms relating to charges and rent charges (forms 45 et seq.).

Approval of drafts

In the rare event of a transaction being undertaken for which no form is provided or to which the scheduled forms cannot conveniently be adapted, the instrument must be in such form as the registrar shall direct or allow, the scheduled forms being followed as nearly as circumstances will permit: L.R.R. 75 (reference may also be made to L.R.R. 80, which applies the same principle to particular forms prescribed by statute for public bodies, corporations, etc.). Approval or otherwise of a draft may be obtained by submitting it and any plan in duplicate (fee 5s. per document, 2s. 6d. per plan: Land Registration Fee Order, 1930, para. XII (4), (12)) to the registrar. Although there are scheduled forms for transfers of leasehold land, there is no scheduled form for the grant of a lease of registered land, but s. 18 (1) (*e*) of the Land Registration Act, 1925, provides it may be done "in any form which sufficiently refers, in the prescribed manner, to the registered land." Further, although there is a scheduled form of charge, by virtue of s. 25 (2) of the Land Registration Act, 1925, a charge may be in any form, provided (*a*) that the land is clearly identified, i.e., by reference to its title number, without reference to any other document, and (*b*) that the charge does not refer to certain other interests (i.e., unregistered prior interests not being overriding interests). In practice therefore ordinary unregistered forms of leases and charges are very often used with the usual Land Registry heading (below) and appropriate alterations to the parcels clause in order to comply with ss. 18 (1) (*e*) and 25 (2), *supra*. Further, it is expressly contemplated by L.R.R. 99 and form 21 that in a transfer into settlement the parties may wish to make additions.

However, to return to the question of commencement, all the scheduled forms require the heading prescribed by Form 19 for a Transfer of Freehold Land (Whole), but otherwise waste no time with niceties but wade straight in, usually with "In consideration of —— pounds (£——) I, *AB*, of, etc., hereby," etc. The heading referred to, familiar no doubt to most readers, is (as slightly amended) the following:—

"H.M. LAND REGISTRY

Land Registration Acts, 1925 *and* 1936

District .....
Title No. .....
Property .....
Date .....

In consideration of . . ."

Registrar's discretion

The sanction for preparing an instrument which appears to the registrar to be improper in form *or substance* (or to be not clearly expressed—a warning to draftsmen) rests also with the registrar. Under L.R.R. 78, he may decline to enter the instrument in the register, either absolutely or subject to approved modifications. Alternatively, with the applicant's consent, he may settle the form of the entry to be made.

Clearly an instrument will be improper in form if it fails to comply with the principles upon which the register is kept. Thus an instrument which refers to other unregistered instruments, to trusts, or to the past history of the title will normally be rejected unless the offending reference is deleted (see also L.R.R. 199 as to the mention of trivial, obvious or inconvenient matters). It was decided by the Court of Appeal in *Morelle* v. *Wakeling* [1955] 2 Q.B. 379, at pp. 415–6 (overruled, in effect, on other points by the House of Lords in *A.-G.* v. *Parsons* [1956] A.C. 421) that if the registrar, who has power to allow a departure from the scheduled forms (see L.R.R. 322 (1)), registers a transfer which is not in a scheduled form, his acceptance of it may be taken as conclusive evidence of the sufficiency of the form used.

One fact emerges inescapably: the registrar has an enormous discretion, whilst the parties have little freedom as to the forms to be used. It is without doubt for practical purposes both simpler and better to accept the registrar's decision, which the writer has never yet found to be unreasonable. In any case, it appears doubtful whether an appeal to the court from the registrar's decision can properly be made. Despite the provision of L.R.R. 299 that "any person aggrieved by an order or decision of the registrar may appeal to the court," Clauson, J., held in *Dennis* v. *Malcolm* [1934] Ch. 244, at p. 252, that no appeal lay in matters of an administrative character where the registrar has made no "order or direction" (*sic*). The rather odd implication of this decision

appears to be that no appeal would lie if the registrar were to decline to register an instrument (L.R.R. 78), but that an appeal would lie if he were to direct a form to be used (L.R.R. 75).

Finally, when considering Land Registry forms of transfer of land, it should always be borne in mind that though they are deeds, they are *not* conveyances in the usual sense. A conveyance is defined in s. 205 (1) (ii) of the Law of Property Act, 1925, as including "a mortgage, charge, lease, assent, vesting declaration, vesting instrument, disclaimer, release and every other assurance of property or of an interest therein by any instrument, except a will." The essential element is that property, or an interest in property, is *thereby* assured by one person to another.

But in registered land conveyancing the general rule is that the legal estate does not pass to the transferee until his name is entered on the register (ss. 19 (1) and 22 (1) of the Land Registration Act, 1925)—just as the transferee of shares in a limited company does not become a member of the company until his name is entered on the register of members: *Société Générale de Paris* v. *Walker* (1885), 11 App. Cas. 20. In the result a Land Registry transfer is little more than an authority addressed to the registrar to make the appropriate entries on the register.

P. P.

Landlord and Tenant Notebook

CONTROL OF MORTGAGES

LANDLORDS and tenants affected by rent control and by decontrol frequently air their grievances. Less ventilation has been afforded to those of mortgagees of controlled properties; and I have been asked to comment on the following position.

When the last century was drawing towards its close, somebody mortgaged half a dozen country cottages for £600 at 5 per cent. These were let on weekly tenancies; and they are still so let. Rateable values on 7th November, 1956, did not exceed £30. None of the original tenants is alive, nor are the parties to the mortgage; there have been a number of changes due to death and other causes. A devisee of the mortgage now wants to call it in, and is met by the answer that it cannot be enforced.

Spirit of the Acts

It is suggested that, the present mortgagor, mortgagee and tenants being so remote from the original parties, this unenforceability is against the spirit of the Acts. I cannot say that I agree with this criticism *in toto*.

The object of rent control legislation is "to provide as many houses as possible at a moderate rent," as Scrutton, L.J., said in *Skinner* v. *Geary* [1931] 2 K.B. 546 (C.A.), and it seeks to achieve that object by limiting rent and conferring security of tenure. (It was pointed out in an Irish case, *Twomey* v. *Cronin* [1937] Ir.R. 324, that the security of tenure provisions are essentially ancillary to the main purpose.)

Now a mortgagee is two things: he is a moneylender, and is the owner of an interest in land (Law of Property Act, 1925, s. 1 (2) (*c*)). Property has been conveyed to him as security for the payment of a debt and, in so far as he has financed the debtor, it is not, I suggest, contrary to the spirit of rent control legislation to restrict his rights against a borrower whose rights are being restricted. Whether the connecting gear is satisfactory is another matter, to which I will revert after saying something about the scope of the restrictions.

Scope

The provisions of the Increase of Rent and Mortgage Interest Restrictions Act, 1920, s. 12, made the Act applicable to existing mortgages where the mortgaged property consisted of or comprised one or more dwelling-houses to which the Act applied. They did not affect mortgages created after the passing of that Act, which were, however, brought into control by the Rent and Mortgage Interest Restrictions Act, 1939, Sched. I.

To be a dwelling-house to which the Act applies, a house must be let: s. 12 (2) of the 1920 Act began with "This Act shall apply to a house or a part of a house let as a separate dwelling." But as was decided by *Dudley and District Benefit Building Society* v. *Emerson* [1949] Ch. 707, if the grant infringes a provision against letting, a tenant is not protected against the mortgagee.

The decontrol provisions of the Rent Act, 1957, are consistent with the suggested principle of linking the position of mortgagee to that of mortgagor. Decontrol was postponed for the fifteen months' period of grace conferred by the "transitional provisions" of Sched. IV; and that, incidentally, whether those provisions applied to the tenancies (they do not affect all decontrolled tenancies) or not. The connection between lender and borrower is thus maintained.

The restrictions

Briefly, as regards foreclosure or sale, all the mortgagor has to do to prevent any calling in is to keep up payments of (permitted) interest, never being more than twenty-one days late; to observe covenants (other than those relating to payment); to pay any interest and instalments due under any prior incumbrance; and to keep the property in "a proper state of repair." The definitions of "mortgagee" and "mortgagor" in s. 12 (1) (*f*) of the 1920 Act make these expressions cover any persons deriving title under the original mortgagee and mortgagor. In one respect, the mortgagor is in a less favourable position than a tenant claiming protection against him; there is no question of whether it is reasonable, etc., and in *Evans* v. *Horner* [1925] Ch. 177, a mortgagor having failed to pay a half-year's interest (4 per cent.) due on a 19th May, the mortgagee issued his summons on 11th June and served it on 12th June; two days later he accepted a cheque for the interest "on account generally" but was held to be entitled to an order for an account in a foreclosure action. As to repair, what is a "proper state" was considered in *Woodifield* v. *Bond* (*No.* 2) [1922] 2 Ch. 40, deciding that the condition of the property when the mortgage was granted or when the restriction applied was the criterion.

As regards rate of interest, there are four limits according to the history of the mortgage. Old control: if it was granted before 3rd August, 1914 (as in the case described), the rate

payable on 3rd August, 1914, is the maximum; if between then and 2nd July, 1920, the rate then agreed. In the case of a mortgage subject to new control, the rate payable on 1st September, 1939, is the maximum if the mortgage was then in force; if it came into existence later, whatever rate was then fixed.

It will have been observed that, when it comes to considering "proper state of repair," the law does not follow the landlord-and-tenant principle by which an agreement to keep in repair includes an agreement to put into repair (*Payne* v. *Haine* (1847), 16 M. & W. 541). In the case of limiting the yield, there is no "application to the house" as there is in the case of rent control (*Winchester Court, Ltd.* v. *Miller* [1944] K.B. 734 (C.A.)); if a mortgage on a house should be paid off, a new one can provide for a higher rate of interest.

Another feature worth noting is that, while mortgagees are essentially moneylenders, there is some distinction between what one might call long-term and short-term investors as regards security of tenure (not as regards interest). A mortgage under which the principal sum is repayable by instalments over not less than ten years—such as the ordinary building society mortgage—is excluded from the operation of the restrictions on enforcing security.

Grievance

Assuming (without asserting or admitting), however, that it was right to put mortgagor and mortgagee of controlled property into the same boat, it can be said that, whether owing to an oversight or not, the mortgagor has been transferred to a better vessel and the mortgagee left in the old one. The change effected when the maximum rent was made no longer dependent on past lettings but on rateable value—it may be recalled that in *Davies* v. *Warwick* [1943] K.B. 329 (C.A.), Mackinnon, L.J., had some very scathing things to say about the old criterion: "If reliance be placed on the previous letting fifty or 500 years ago the judge is given no discretion to take into account the altered value of money," etc.—has not been reflected in any change affecting mortgagees and interest. While the mortgagor landlord may be getting more rent, he is not paying more interest to the mortgagee, who very likely feels that he has never had it so bad.

R. B.

HERE AND THERE

SHAKESPEARE IN GRAY'S INN

JUST before Christmas, Richard Roe was privileged to attend the first performance of the production of *Twelfth Night* presented in Gray's Inn by the Bar Theatrical Society. Report says that it had not been possible to secure the larger Middle Temple Hall, but perhaps the Templars have lost interest in the play since Professor Leslie Hotson fatally undermined the tradition that it was first performed there in 1602. That scholar-detective, who has made Shakespearean research as enthralling as a "whodunit," examined with meticulous care the scattered records of the Christmastide of 1600–1601, when Queen Elizabeth was entertaining a real live Duke Orsino from Italy and the climax of the festivities was the performance of this play on the 6th January in the great hall of Whitehall Palace. It was an interesting diplomatic technique. Next time Mr. Krushchev pays a visit to the West, would it put him in a good humour to take him to a play or opera representing a Mr. Krushchev as a romantic hero? If music be the food of love, play on. In Whitehall, Professor Hotson has discovered, they played on a central arena stage with stands for the spectators built all round it. In Gray's Inn Hall the Elizabethan screen formed the background, with steep tiers of seats erected at the dais end of the Hall. Boldly and cleverly they transposed the first two scenes of the play, opening in semi-darkness with the shipwreck aftermath, which indeed makes a natural prelude, describing characters and situation. Maybe the orthodox Scene 1 owed its situation to the necessity of paying an initial compliment to the guest of honour.

TRAGI-COMEDY

FROM first to last this production was a splendid success, judged by any standards, and at the heart and centre of that success was (it will seem strange to the world at large) a judge of the Chancery Division. In inflexion of voice, in precision of gesture, in variety and nuance of expression, Sir Denys Buckley (reminding one facially a little of the portraits of Cardinal Richelieu) was the very incarnation of the Lady Olivia's tragical-comical steward. He brought to the part of Malvolio everything that experienced professional ability could have brought. As his two chief tormenters, Basil Garland and James Stirling played Sir Toby Belch and Sir Andrew Aguecheek in the happiest and most hilarious partnership. Here was an admirably restrained Sir Toby, poker-faced, vinous complexioned, pickled in alcohol, unscrupulous in fooling a nincompoop, but still a gentleman, with his courage and wits wide awake in an emergency. Here was a most satisfying reading of the part, beautifully matched by an Aguecheek, lively in his minus-masculinity, but with a *naïvété* and an essential innocence which made him curiously engaging. To round off the trio, Humphry Tilling presented Feste, Olivia's fool, as a detached spectator of the follies of others. Now, Feste in the play hides his wisdom beneath a mask of folly like Beachcomber in the *Express* or Peter Simple in the *Telegraph*. He might perhaps be played as Tommy Handley used to play Itma. (There is a suggestion of the Itma-esque about much of his humour.) But here was only the barest suggestion of the mask. Here was a Feste who, though he established himself as a character, was far too obviously solid and sensible; he lacked maybe a touch of the sardonic, the withdrawn, the ironical.

THE ROMANCES

So much for the downfall of Malvolio and its contrivers. What of the romance of two pairs of lovers? What of Viola and Olivia? Shirley Reeve brought to Viola's gallant impersonation an enchanting combination of charm and confidence beautifully balanced and a figure and face to set them off. (In parenthesis, I have heard that her connection with the legal profession is on the solicitors' side.) Catherine Buckley, the judge's daughter, likewise had all the advantages of grace and beauty to captivate Orsino's fancy, playing her part with a light touch. I have always felt that Olivia's mourning, no less than Orsino's infatuation, was a deliberate artistic pose, a graceful high-bred attitude. This Olivia went a step further and played her part with a happy frivolity in keeping with a presentation of the play which was gay and

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spirited and passed over those undertones of wistful melancholy haunting the text. Perhaps deliberately, Brian Watling stripped Orsino of much of his poetic quality, his grace and elegance. His quizzical expression, indeed, suggested comedy rather than romance. Barry Woolland as Sebastian achieved enough apparent resemblance to Viola to make a credible brother but was too heavily built for an identical twin. Since one of the key situations of this play is mistaken identity, there is much to be said for the device, used in the other current production of it, of fixing it in the time of Charles I when the men's long hair and the cut of their clothes can be used to help the trick of illusion. Two other secondary parts deserve a mention. Aileen Raymond's sharp, lively Maria had a professional virtuosity that elevated it to distinction of the first class, while Christopher Lush's handling of Fabian showed him worthy of a heavier responsibility.

THE SETTING

If I had said at the start that the dressing of the play was mainly Watteau with Elizabethan graftings and that at first sight Orsino's court rather reminded one of the first Act of *The Gondoliers*, it would have given a wholly false impression that the production was merely bizarre. As a matter of fact, one had no sense of incongruity. The method of Greville Poke, the producer, was firm, smooth and consistent, and brilliant use was made of the traditional but fresh and lively music specially composed by John de Grey and arranged by Alfred Nieman. The march of the gardeners moving the orange trees was the only piece of scene shifting I have ever heard applauded. The taper-lit procession of the whole cast in the darkened Hall as Feste sang his epilogue song closed the evening with a picture of rare loveliness. In this production gaiety eclipsed reflective wistfulness, but Shakespeare's plays have an essential flexibility. Like all works of genius, which touch truth and reality at many points, they speak in different tones to different people. So you are free to treat this one as a gay Twelfth Night entertainment, or what you will.

Richard Roe.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of " The Solicitors' Journal "]

Saving on School Fees

Sir,—May I make a few comments to Mr. K. B. Edwards' excellent article " Saving on School Fees " in your issue of 9th December ? As my firm is the company referred to in relation to the payment of fees by a capital sum in advance, I would like to make one or two clarifications.

Firstly, the payment required to provide the fees has recently been altered at the request of the Governing Bodies Association of Public Schools and the cost of fees of £300 a year for five years is now as follows : (*a*) thirteen years before entry £971 5s. 6d., (*b*) ten years before entry £1,071 18s. 0d., (*c*) five years before entry £1,239 14s. 3d., (*d*) on entry to the school £1,408 12s. 6d. Secondly, the scheme is now available for any school or university to which payment may be made in sterling.

Although the saving no longer represents a tax-free investment of 4½ per cent. as stated by Mr. Edwards, it is still an attractive saving, especially when the child is young and there is the additional advantage that the capital may be immediately freed from estate duty liability without waiting the normal five years.

We are a firm of independent insurance brokers, but this particular scheme is underwritten by the Guardian Assurance Company Limited and I suggest that any solicitor wishing for further particulars should ask his local Guardian Assurance Company office for details of the School Fees Insurance Agency's " Trustee Scheme for Pre-payment of School Fees."

J. F. W. Hastings,
Managing Director,
The School Fees Insurance Agency, Ltd.

10 Queen Street,
Maidenhead,
Berks.

Smith's Case

Sir,—I doubt whether the ordinary practitioner in the criminal courts—be he a barrister or a solicitor—would show much interest in my alleged optimism or J.B.G.'s confessed pessimism (104 Sol. J. 946–7). His business is to prosecute accused persons or to assist his clients and assist the magistrate or the judge and jury at the trial. In the discharge of those duties he has to examine and cross-examine witnesses and make submissions and speeches, within the bounds of relevancy and in conformity with the authorities. It is therefore incumbent upon him fully to understand the decisions of superior tribunals. I think that the misunderstanding over the one we are immediately concerned with (*Director of Public Prosecutions* v. *Smith* [1960] 3 W.L.R. 546) has arisen because it did two things : (*a*) it approved the direction given to the jury by the trial judge, and (*b*) it criticised the judgment of the Court of Criminal Appeal (*R.* v. *Smith* [1960] 3 W.L.R. 92) ; and because people have confused contemplation with intention. What the accused contemplates —i.e., views mentally, expects, foresees—as distinct from what he intends, has always been subjected to the objective test. As to his intention, let us examine each of the three passages in the summing-up complained of on appeal to the House :—

> 1. " The *intention* with which a man did something can usually be determined by a jury only by *inference* from the *surrounding circumstances*, including the *presumption of law* that a man intends the natural and probable consequences of his acts."

To begin with, the jury were asked to ascertain the *intention of the accused* by way of *inference* from the *surrounding circumstances*. Then his lordship instructed them that, among those circumstances, they would have to consider the *presumption of law*. They were not required to confine their attention to that presumption, because other circumstances—such as age, sex and state of health—might qualify its working (not rebut it).

> 2. " If you feel yourselves *bound to conclude* from the evidence that the accused's purpose . . . then you *may infer* that that was the *accused's intention* . . ."

Here again his lordship speaks of the *accused's intention* and about gathering it by way of *inference*. And mark the contrast between the two phrases, " bound to conclude " and " may infer " ; in the protasis of the sentence the jury are told that they must be *compelled* by the evidence to arrive at the real purpose of the accused, whereas in apodosis it is left *open* to them to find that by carrying out his purpose he intended to do serious harm.

> 3. " . . . if the reasonable man would realise that the effect of doing that might well be to cause harm to this officer, then, as I say, you would be *entitled to impute* such an intention to the accused . . ."

J.B.G. quotes only the end of this passage, omitting the vital beginning quoted above, where once more the jury's finding was left *unfettered* by technicalities : it remained *open* to them to *impute* to the accused the *supposed intention* of the *hypothetical reasonable man*—and, of course, it was equally *open* to them not to do so. They were left completely free to reason things out for themselves. It follows, does it not, that there was no substitution of the objective for the subjective test. Indeed, the *hypothetical reasonable man* and his *supposed intention* are not traps wherein the jury might be ensnared, but real opportunities for counsel on both sides skilfully to manœuvre for position and fairly to wrestle for the jury's verdict.

In the circumstances, it is clear that his lordship's direction might be accurately stated in the *following* proposition: "If a reasonable man *must* have foreseen the consequences as certain or likely to happen, then you *may* find that the accused intended them."

Finally, in the course of their criticism of the judgment of the Court of Criminal Appeal, their lordships reviewed a number of cases—including *R.* v. *Lumley* (1911), 22 Cox C.C. 635, of which they did not disapprove. Yet in that case, which was one of abortion—after directing the jury on the contemplation of a reasonable man—Avory, J., specifically adverted to the subjective aspect, directing the jury that if the accused "thought that by his own skill as a medical man he could perform this operation without any risk either of death or grievous bodily harm, then you would be justified in convicting him of manslaughter." *Mutatis mutandis*, a similar direction is frequently given in receiving and wounding cases.

I hope I have established conclusively the soundness of the two propositions in my article (104 Sol. J. 771) which were contested by J.B.G.

JOSEPH YAHUDA.

Temple, E.C.4.

Fusion for Beginners?

Sir,—I am against fusion. In complicated urban societies the division of the legal profession is a necessity and it exists in practice in countries where it does not exist in theory. The advantages of specialist division do not, however, hold good at the beginners' level, and consideration is already being given to assimilating the education and training of the two branches of the profession. Independently of that question, I would suggest a further measure of fusion for beginners.

I propose that the regulations of the four Inns of Court be amended so as to permit a newly called barrister to be employed by a solicitor for a salary subject to the following conditions: (*a*) the permission should be limited to a period of a few years, say five, from the date of call; (*b*) the barrister shall not previously have attempted to practise at the bar; (*c*) the employment shall be whole-time and exclusive employment in and about the solicitor's own practice; (*d*) the barrister's right of audience while so employed shall accordingly be restricted to that of his principal, i.e., to appearing for clients of the firm in county courts, magistrates' courts, other inferior courts and tribunals, High Court chambers (and bankruptcy appeals, if any!); (*e*) the proposed employer and the terms of employment shall be approved by the Bar Council, who would no doubt consult The Law Society when in doubt and might publish an approved form of service agreement; (*f*) a barrister who has been employed by a solicitor shall not afterwards be entitled to practise at the Bar until he has undergone a minimum period of pupillage of, say, six or nine months.

The suggested advantages of this proposal are: (1) it would enable barristers to earn a steady income at a time when they at present cannot; (2) it should therefore encourage more young men to be called to the Bar and should relieve the present disturbing shortage of new barristers; (3) it should also enable barristers to save for pupillage, which it is agreed ought to be compulsory but which is at present an additional financial handicap; (4) it should alleviate the shortage of assistant solicitors and compensate for the gradual disappearance of unadmitted managing clerks; (5) it should enable barristers to learn aspects of legal practice with which at present they have little opportunity to become familiar; (6) where applicable, it should provide an opportunity of practical training in solicitors' work for barristers who intend to practise in Commonwealth countries where fusion exists.

It would no doubt be objected on behalf of the Bar that work would be diverted from practising barristers, but I believe any fears on this score to be unrealistic. No more than at present would solicitors entrust their clients' cases to inexperienced advocates. It is more probable that employed barristers would attend those appointments for which counsel are at present rarely briefed but which solicitors can ill-afford the time to attend themselves. If work were diverted from anybody, it would, I believe, be from those solicitors who conduct judgment summonses, "disposals," applications, and similar small matters in county courts as agents for other solicitors (notwithstanding s. 89 of the County Courts Act). Would the loss of some of this work be a matter of regret to them? Nor, I believe, would a barrister who had been employed by a solicitor be in a more favourable position to attract work afterwards than a barrister who had not been so employed. A man who in five years had proved his worth would no doubt be instructed by his former employer, and possibly also by other firms with whom he had come into contact, but such a man would in any case be acquiring a practice of his own after five years. (A man who did not prove his worth would, of course, derive no advantage at all.) For many years past Bar *students* have been permitted to work for solicitors (without remuneration) for one year up till six months prior to their call, and it has presumably therefore been found that such persons are not in an unduly favourable position to attract work when they commence to practise at the Bar.

It might also be objected that employed barristers would lose the experience of appearing in open court in the High Court or Court of Appeal, but how often at present does a barrister receive a High Court brief in his first five years? His High Court experience during those years more often consists of "holding the brief" for a more senior member of chambers, but in the interests of the lay client it is doubtful whether the continuance of this practice is to be encouraged. On the other hand, an employed barrister would probably have more frequent opportunities for practising advocacy than at present, and the necessary fluency and self-confidence can be acquired (at less risk to the lay client) as well in conducting unimportant cases as important ones. It is not, of course, suggested that an employed barrister could be wholly engaged on advocacy, even in firms with the largest litigation practices. Much of his time would be occupied on "solicitors' work." But would he not be a better barrister afterwards for having had practical experience of, for example, drafting commercial and other documents, income tax and estate duty, the taxation of costs, and the preparation of trust accounts?

There might also be objections from newly admitted solicitors fearing increased competition, but I believe this fear to be equally unrealistic. The present shortage of assistant solicitors is notorious (at any rate in London, and it is in London that newly called barristers would mainly be employed). Barristers would be ineligible for permanent posts or positions with prospects of partnership and the more attractive positions would continue, therefore, to be reserved for solicitors. Nor would any firm of solicitors fortunate enough to possess an experienced managing clerk dispense with his services in favour of a young man who could only stay five years at the most. It might also be objected on behalf of solicitors that the proposal represents a one-sided concession to the Bar. Save that it should alleviate the present shortage of qualified assistants, it is true that it does. On the other hand, it is not in the long-term interest of solicitors that the Bar should die away for want of new recruits.

If the proposal found favour, it would, as far as I can see, require no legislation to implement it, the matter being governed entirely by the etiquette of the Bar. It is the intention, and would appear to be the law, that a solicitor would be liable for the negligence of a barrister in his salaried employment and entitled to no other fees for work done by such a person than for work done by himself.

"FUSE-BOX."

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Battersea, Clapham Junction, Tooting, Southfields.—RAYNERS (Neville Rayner, J.P., F.V.I., F.R.V.A.; L. S. E. Pegler, A.R.I.C.S., A.A.I.), 205 Lavender Hill, S.W.11. Tel. BATtersea 8686. Four Offices.

Blackheath and Sidcup.—DYER SON & CREASEY Chartered Surveyors, 22 Tranquil Vale, S.E.3, and 111 Station Road, Sidcup.

Brentford (for West London and West Middlesex).—LINNEY, MATTHEWS & CO. (C. A. Naylor, F.A.I., F.A.L.P.A., F.V.I.), Chartered Auctioneers and Estate Agents, Valuers, 112 High Street, Brentford. Tel. ISLeworth 5277/8.

Chiswick and Bedford Park.—TYSER, GREENWOOD & CO., 386 High Road. H. Norman Harding, F.R.I.C.S., F.A.I., Ernest J. Griffen, F.A.I., G. S. Bradley, F.A.I., Est. 1873. Tel. Chiswick 7022/3/4.

Ealing, Ealing Common and District.—JONES & CO., F.A.I., Chartered Auctioneers and Estate Agents, adj. Ealing Common Station, W.5. Tel. ACO 5006 (3 lines).

Ealing, Hanwell and District.—P. CHASE GARDENER AND CO., Auctioneers, Surveyors, Valuers and Estate Agents, 87 Uxbridge Road, Hanwell, W.7. Tel. EALing 1918.

East Ham.—HAMLETTS' (LEWIS J. HAMLETT, F.R.I.C.S.), 764 Barking Road, Plaistow, E.13, Surveyors and Estate Agents. Est. 1893. Tel. Grangewood 0546.

East Sheen, Barnes and Richmond.—C. & E. MELVILLE (John A. Knowlton, F.R.I.C.S.), 233 Upper Richmond Road West, East Sheen, S.W.14. Tel. PROspect 1021/2/3.

Edgware.—E. J. T. NEAL, F.R.I.C.S., F.A.I., 39 Station Road. Tel. EDG 0123/4.

Finchley.—E. C. LLOYD, 336 Regents Park Road, N.3. Tel. Finchley 6246/7.

Finchley and Barnet.—SPARROW & SON, Auctioneers Surveyors and Valuers, 315 Ballards Lane, N.12. Est. 1874. Tel. Hil. 5252/3.

Hammersmith.—MORTON & WATERS, 310 King Street. Valuations, Survey. Estates Managed. Tel. Riverside 1080 and 4567.

(*continued on p. xvi*)

REGISTER OF
Auctioneers, Valuers, Surveyors, Land and Estate Agents

Harrow.—E. BECKETT, F.A.I., Surveyor, Chartered Auctioneer and Estate Agent, 7 College Road, Harrow. Tel. Harrow 5216. And at Sudbury, Wembley, North Harrow and Moor Park, Northwood.

Harrow.—CORBETT ALTMAN & CO., F.R.I.C.S., F.A.I., Chartered Surveyors, Chartered Auctioneers and Estate Agents, 40 College Road, Harrow. Tel. Harrow 6222. Also Rating, Compensation and Planning Surveyors.

Harrow.—P. N. DEWE & CO. (P. N. Dewe, F.A.L.P.A., J. Ferrari, F.R.I.C.S., F.A.I., M.R.San.I., J. Cosgrave, A.R.I.C.S., A.M.I.Struct.E.), 42 College Road. Tel 4288/90 Associated offices at Hillingdon. Established 1925.

Hendon and Colindale.—HOWARD & MANNING (G. E. Manning, F.A.L.P.A., F.V.I.), Auctioneers, Surveyors and Valuers, 218 The Broadway, West Hendon, N.W.9. Tel. Hendon 7686/8, and at Northwood Hills, Middx. Tel. Northwood 2215/6.

Hendon.—DOUGLAS MARTIN & PARTNERS, LTD. —Douglas Martin, F.A.L.P.A., F.V.A.; Bernard Roach, F.A.L.P.A.; Jeffrey Lorenz, F.V.A.; John Sanders, F.V.A.; Alan Pritchard, A.V.A., Auctioneers, Surveyors, etc., Hendon Central Tube Station, N.W.4. Tel. HEN 6333.

Hendon.—M. E. NEAL & SON, 102 Brent Street, N.W.4. Tel. Hendon 6123. Established 1919.

Ilford.—RANDALLS, F.R.I.C.S., Chartered Surveyors and Auctioneers (established 1884), 67 Cranbrook Road, Tel. VALentine 6272 (10 lines).

Leyton.—HAROLD E. LEVI & CO., F.A.L.P.A., Auctioneers and Surveyors, 760 Lea Bridge Road, Leyton, E.17. Tel. Leytonstone 4423/4424.

Leyton and Leytonstone.—R. CHEKE & CO., 252 High Road, E.10. Tel. Leytonstone 7733/4.

Leytonstone.—COMPTON GUY, Est. 1899, Auctioneers, Surveyors and Valuers, 55 Harrington Road. Tel. Ley 1123. And at 1 Cambridge Park, Wanstead. Tel. Wan 5148; 13 The Broadway, Woodford Green, Tel. Buc 0464.

Leytonstone.—PETTY, SON & PRESTWICH, F.A.I. Chartered Auctioneers and Estate Agents, 682 High Road, Leytonstone, E.11. Tel. LEY 1194/5, and at Wanstead and South Woodford.

Mill Hill.—COSWAY ESTATE OFFICES, 135/7 The Broadway, N.W.7. Tel. Mill Hill 2422/3422/2204.

Norbury.—DOUGLAS GRAHAM & CO., Estate Agents, Property Managers, 1364 London Road, S.W.16. Tel. POL 1313/1690. And at Thornton Heath, Sutton and Piccadilly, W.1.

Putney.—QUINTON & CO., F.A.I., Surveyors, Chartered Auctioneers and Estate Agents, 153 Upper Richmond Road, S.W.15. Tel. Putney 6249/6617.

South Norwood.—R. L. COURCIER, Estate Agent, Surveyor, Valuer, 4 and 6 Station Road, S.E.25. Tel. LIVingstone 3737.

Stanmore.—GLOVER of STANMORE, F.V.I., The Broadway (and at Station). Grimsdyke 2241 (5 lines).

Tottenham.—HILLYER & HILLYER (A. Murphy, F.A.I., F.V.A.), Auctioneers, Surveyors, Valuers and Estate Managers, 270/2 West Green Road, N.15. Tel. BOW 3464 (3 lines).

Walthamstow and Chingford.—EDWARD CULFF & CO., F.A.L.P.A., Auctioneers and Surveyors and Estate Agents, 92 St. Mary Road, Walthamstow, E.17. Tel. COPpermill 3391. Specialists in Property Management.

Wandsworth (Borough of), Battersea and S.W. Area.—MORETON RICHES, Surveyor, Auctioneer and Valuer, House and Estate Agent, 92 East Hill, Wandsworth, S.W.18. Tel. VANdyke 4166/4167.

Wood Green.—WOOD & LOACH, Chartered Auctioneers and Estate Agents, Surveyors and Valuers, 723 Lordship Lane, N.22 (adjacent Eastern National Bus Station, close to Wood Green Tube Station). Tel. Bowes Park 1632.

PROVINCIAL

BEDFORDSHIRE

Bedford.—J. R. EVE & SON, 40 Mill Street, Chartered Surveyors, Land Agents, Auctioneers and Valuers. Tel. 67301/2.

Bedford.—ROBINSON & HALL, 15A St. Paul's Square, Chartered Surveyors. Tel. 2201/2/3.

Luton.—RICHARDSON & STILLMAN, Chartered Auctioneers and Estate Agents, 30 Alma Street, Tel. Luton 6492/3.

BERKSHIRE

Abingdon, Wantage and Didcot.—ADKIN, BELCHER & BOWEN, Auctioneers, Valuers and Estate Agents. Tel. Nos. Abingdon 1078/9. Wantage 48. Didcot 3197.

Bracknell.—HUNTON & SON. Est. 1870. Auctioneers and Estate Agents, Valuers. Tel. 23.

County of Berkshire.—TUFNELL & PARTNERS, Auctioneers, Valuers and Surveyors, Sunninghill (Ascot 1666), Windsor (Windsor 1) and Streatley (Goring 45).

Didcot and District.—E. P. MESSENGER & SON, Chartered Auctioneers and Estate Agents, etc., The Broadway. Tel. Didcot 2079.

Faringdon.—HOBBS & CHAMBERS, Chartered Surveyors, Chartered Auctioneers and Estate Agents. Tel. Faringdon 2113.

Maidenhead.—L. DUDLEY CLIFTON & SON, Chartered Auctioneers and Estate Agents, Surveyors and Valuers, 32 Queen Street. Tel. 62 and 577 (4 lines).

Maidenhead, Windsor and Sunningdale.—GIDDY & GIDDY. Tel. Nos. Maidenhead 53, Windsor 73, Ascot 73.

Newbury.—DAY, SHERGOLD & HERBERT, F.A.I., Est. 1889. Chartered Auctioneers and Estate Agents, Market Place, Newbury. Tel. Newbury 775.

Newbury.—DREWEATT, WATSON & BARTON. Est. 1759. Chartered Auctioneers, Estate Agents and Valuers, Market Place. Tel. 1.

Newbury.—C. G. FOWLIE, F.R.I.C.S., F.A.I., Chartered Surveyor, 16 Bartholomew Street. Tel. 761 (2 lines).

Newbury and Hungerford.—A. W. NEATE & SONS. Est. 1876. Agricultural Valuers, Auctioneers, House and Estate Agents. Tel. Newbury 304 and 1620. Hungerford 8.

Reading.—HASLAM & SON, Chartered Surveyors and Valuers, Friar Street, Chambers. Tel. 54271/2.

Windsor and Reading.—BUCKLAND & Sons, High Street, Windsor. Tel. 48. And 154 Friar Street, Reading. Tel. 51370. Also at Slough and London, W.C.

BUCKINGHAMSHIRE

Amersham and The Chalfonts.—SWANNELL & SLY, Hill Avenue, Amersham. Tel. 73. Valuers, Auctioneers, etc.

Amersham, Chesham and Great Missenden.—HOWARD, SON & GOOCH, Auctioneers, Surveyors, and Estate Agents, Oakfield Corner, Amersham (Tel. 1430), and at Chesham 8097 and Great Missenden 2194.

Aylesbury.—PERCY BLACK & CO., Chartered Surveyors, Chartered Auctioneers and Estate Agents, 18 Market Square. Tel. 4661/3.

Aylesbury.—W. BROWN & CO., 2 Church Street. Tel. 4706/7. Urban and Agricultural practice.

Beaconsfield.—HAMNETT, RAFFETY & CO., Chartered Surveyors, Chartered Auctioneers and Estate Agents. Opposite the Post Office. Tel. 1290/1.

Farnham Common.—HAMNETT, RAFFETY & CO., Chartered Surveyors, Chartered Auctioneers and Estate Agents, The Broadway. Tel. 109.

High Wycombe.—HAMNETT, RAFFETY & CO., Chartered Surveyors, Chartered Auctioneers and Estate Agents, 30 High Street. Tel. 2576/7/8/9.

BUCKINGHAMSHIRE (*continued*)

High Wycombe.—HUNT & NASH, F.R.I.C.S., F.A.I., Chartered Surveyors, 15 Crendon Street. Tel. 884.

High Wycombe and South Bucks.—H. MORCOM JONES & CO., F.A.I., Chartered Auctioneers, 86 Easton Street. Tel. 1404/5.

North Bucks.—DOUGLAS STRATFORD & CO. Est. 1890. Bletchley 2201/2. Bedford 66373. Luton 2953.

Princes Risborough.—HAMNETT, RAFFETY & CO., Chartered Surveyors, Chartered Auctioneers and Estate Agents, High Street. Tel. 744/5.

Slough.—EDWARD & CHARLES BOWYER, Chartered Surveyors, 15 Curzon Street. Tel. Slough 20321/2.

Slough.—BUCKLAND & SONS, 26 Mackenzie St. Tel. 21307. Also at Windsor, Reading and London, W.C.1.

Slough.—HOUSEMANS, Estate and Property Managers, Surveyors, Valuers, House, Land and Estate Agents, Mortgage and Insurance Brokers, 46 Windsor Road. Tel. 25496. Also at Ashford, Middlesex.

Slough and Gerrards Cross.—GIDDY & GIDDY. Tel. Nos. Slough 23379, Gerrards Cross 3987.

CAMBRIDGESHIRE

Cambridge.—HOCKEY & SON. (Est. 1885.) Auctioneers and Surveyors. 8 Benett Street. Tel. 59455/6.

Cambridge and County.—WESTLEY & HUFF, Auctioneers, Surveyors and Valuers, 10 Hills Road, Cambridge. Tel. 55665/6.

CHESHIRE

Altrincham.—STUART MURRAY & CO., Auctioneers, etc., 8 The Downs. Tel. 2302/3. And at Manchester.

Birkenhead.—SMITH & SONS (Est. 1840), Auctioneers, Valuers, BIRKENHEAD (Tel. 1590); and at Liverpool.

Birkenhead and Wirral.—Messrs. JAMES HARLAND, W. J. Harland, F.R.I.C.S., F.A.I., Chartered Surveyor, 46 Church Road, Birkenhead. Tel. 1597/8.

Chester.—BERESFORD, ADAMS & SON. (Est. 1899.) Auctioneers, Valuers and Surveyors, 22 Newgate Street. Tel. No. 23401.

Chester.—BROWNS OF CHESTER, LTD., Auctioneers, Valuers and Estate Agents, 103 Foregate Street. Tel. Chester 21495/6.

Chester.—HARPER, WEBB & CO. (Incorporating W. H. Nightingale & Son), Chartered Surveyors, 35 White Friars, Chester. Tel. Chester 20685.

Chester.—SWETENHAM, WHITEHOUSE & CO., Auctioneers, Estate Agents, Surveyors, Valuers, 5 St. Werburgh Street. Tel. 20422.

Congleton.—LOUIS TAYLOR & SONS, F.A.I., Chartered Auctioneers and Estate Agents, 21 High Street. Tel. 91.

Congleton.—W. J. WHITTAKER & CO., Incorporated Auctioneers, Valuers and Estate Agents, Congleton, Cheshire. Tel. 241.

Crewe.—HENRY MANLEY & SONS, LTD., Auctioneers & Valuers, Crewe (Tel. 4301) & Branches.

Macclesfield.—BROCKLEHURST & CO., Auctioneers, Valuers, Estate Agents, King Edward Street. Tel. 2183.

Nantwich, Northwich, Winsford & Tarporley.—JOSEPH WRIGHT, Auctioneers, Valuers and Estate Agents, 1 Hospital Street, Nantwich. Tel. 65410.

Northwich.—MARSH & SON, Auctioneers, Valuers, Estate Agents, 4 Bull Ring. Tel. 2216.

Stockport.—HOPWOOD & SON (Est. 1835), Chartered Auctioneers, Valuers, Estate Agents, 69 Wellington Road South. Tel. STO 2123.

CORNWALL

County of Cornwall.—JOHN JULIAN & CO., LTD. Established 1836. Auctioneers, Valuers, Estate Agents. Offices at Newquay, Truro, Falmouth and Wadebridge.

County of Cornwall.—RUSSELL & HAMLEY, F.A.I. (C. J. HAMLEY, F.A.I., A. W. Russell, F.A.I.), 31 Town End, Bidmin. Tel. 346.

Falmouth.—R. E. PRIOR, F.R.I.C.S., F.A.I., Chartered Surveyor and Auctioneer, 3 Market Street, Falmouth. Tel. 1224

Mid-Cornwall.—S. A. WILSON, F.V.I., St. Austell. Tel. 743 (day and night). Valuer, Business and House Agent.

Penzance, St. Ives, West Cornwall and Isles of Scilly.—W. H. LANE & SON, F.A.L.P.A., The Estate Offices, Morrab Road, Penzance. Tel. Penzance 2286/7.

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CORNWALL (*continued*)

Redruth.—A. PEARSE JENKIN & PARTNERS. Est. 1760. Auctioneers, Surveyors and Valuers, Alma Place.

St. Austell and Looe.—LAMPSHIRE & NANCOLLAS Chartered Auctioneers and Estate Agents. St. Austell 3254/5. Looe 309.

St. Austell, Lostwithiel and Liskeard.—ROWSE, JEFFERY & WATKINS, Auctioneers, Valuers, Surveyors and Estate Agents. St. Austell 3483/4. Lostwithiel 45 and 245. Liskeard 2400.

Truro, Mid and West Cornwall.—R. G. MILLER & CO., Auctioneers, Valuers and Estate Agents. Established 1934. R. G. Miller, F.V.I., A. I. Miller, A.A.I., 6 King Street. (Phone Truro 2503.)

DERBYSHIRE

Derby.—ALLEN & FARQUHAR, Chartered Auctioneers and Estate Agents, Derwent House, 39 Full Street. Tel. Derby 45645 (3 lines).

DEVONSHIRE

Axminster.—25-mile radius.—TAYLOR & CO., Auctioneers, Valuers, Surveyors, Estate Agents. Tel. 2323/4.

Axminster, East Devon, South Somerset and West Dorset Districts.—R. & C. SNELL, Chartered Auctioneers, Estate Agents, Valuers and Surveyors, Axminster (Devon), Chard (Somerset) and Bridport (Dorset).

Barnstaple and N. Devon.—BRIGHTON GAY, F.A.L.P.A., Surveyors, Valuers, Auctioneers, Joy Street, Barnstaple. Tel. 4131.

Barnstaple and N. Devon.—J. GORDON VICK, F.R.I.C.S., F.A.I., Chartered Surveyor, Chartered Auctioneer. Tel. 4388.

Bideford and North Devon.—R. BLACKMORE & SONS, Chartered Auctioneers and Valuers. Tel. 1133/1134.

Bideford and North Devon.—A. C. HOOPER & CO., Estate Agents and Valuers. Tel. 708.

Brixham and Torbay.—FRED PARKES, F.A.L.P.A., Estate Agent, Auctioneer and Valuer, 15 Bolton Street. Tel. 2036.

Devon and Exeter.—GUY MICHELMORE & CO., Norwich Union House, Exeter. Tel. 76464/5.

Devon, Exeter and S.W. Counties.—RICKEARD, GREEN & MICHELMORE, Estate Agents, Auctioneers, Surveyors and Valuers, 82 Queen Street, Exeter. Tel. 74072 (2 lines).

Exeter.—RIPPON, BOSWELL & CO., Incorporated Auctioneers and Estate Agents, Valuers and Surveyors. Est. 1884. Tel. 59378 (3 lines).

Ilfracombe.—W. C. HUTCHINGS & CO., Incorporated Auctioneers, Valuers and Estate Agents. Est. 1887. Tel. 138.

Okehampton, Mid Devon.—J. GORDON VICK, Chartered Surveyor, Chartered Auctioneer. Tel. 22.

Paignton, Torbay and South Devon.—TUCKERS, Auctioneers and Surveyors, Paignton. Tel. 59024.

Plymouth.—D. WARD & SON, Chartered Surveyors, Land Agents, Auctioneers and Valuers. (Est. 1872.) 11 The Crescent, Plymouth. Tel. 66251/4.

Sidmouth.—POTBURY & SONS, LTD., Auctioneers, Estate Agents and Valuers. Tel. 14.

Teignmouth, Shaldon, etc.—ROBT. FROST & SON (Robt. Frost, F.A.I., Chartered Auctioneer and Estate Agent). Est. 1857. 5 Regent Street, Teignmouth. Tel. 671/2.

Torquay and South Devon.—WAYCOTTS, Chartered Auctioneers and Estate Agents, 5 Fleet Street, Torquay. Tel. 4333/5.

DORSETSHIRE

Poole, Parkstone, Broadstone.—RUMSEY & RUMSEY, Head Office, 111 Old Christchurch Road. Tel. Bournemouth 21212. 14 Branch Offices in Hants and Dorset and Channel Islands.

West Dorset.—ALLEN, TAYLOR & WHITFIELD, 25 East Street, Bridport. Tel. 2929.

DURHAM

Darlington.—JAMES PRATT & SONS, F.V.I., Auctioneers, Valuers and Estate Agents, 40a High Row. Tel. 4831.

Darlington.—SANDERSON, TOWNEND & GILBERT, Chartered Surveyors, 92 Bondgate.

REVIEWS

The Caravan Sites and Control of Development Act, 1960. By GRAHAM WILSON, Solicitor, formerly Town Clerk and Clerk of the Peace of Maidstone. Reprinted from Butterworth's Annotated Legislation Service. pp. xi and (with Index) 193. 1960. London: Butterworth & Co. (Publishers), Ltd. £1 12s. 6d. net.

This book is reprinted from Butterworth's Annotated Legislation Service, and its general pattern follows that of other works in that service.

The book starts with a general introduction giving the background to the Act, its general scope and a detailed review of its contents. This is followed by a print of the Act itself with annotations by Mr. R. Schless, of Gray's Inn, Barrister-at-Law. There are appendices containing annotated extracts from other relevant legislation, the statutory instruments prescribing the application forms for site licences for caravan sites in England and Wales and in Scotland respectively, and the Minister of Housing and Local Government's model standards for these sites. The whole is completed by a very full index.

The introduction and the annotations are well prepared and reliable, and the book forms a very workmanlike guide to the intricacies of the Act.

Legal Theory. Fourth Edition. By W. FRIEDMAN, LL.D. (London), Dr.Jur. (Berlin), LL.M. (Melbourne), of the Middle Temple, Barrister-at-Law. pp. xx and (with Index) 564. 1960. London: Stevens & Sons, Ltd. £2 5s. net.

Since this Journal circulates mainly amongst practitioners, it may be that the first reaction of readers of this review will be that practice of the law leaves too little time for theory and that jurisprudence has been assigned to the universities. This is surely an arid view. As Professor Friedman states (p. 4), " The new era of legal philosophy arises mainly from the confrontation of the professional lawyer, in his legal work, with problems of social justice." Neither the aim nor the theory of law should be separated from its practice. However, it would be pointless to pretend that this book is a " must " for the office; on the contrary, it is thought that much of it may well be beyond the average practitioner. Even so, for those who think beyond their immediate task and wonder why—why anything—there is enlightening material here. Thus in the analysis in ch. 23 of " American Realism " a practitioner will perhaps sympathise both with the starting premise, " The prophecies of what the courts will do in fact and nothing more pretentious are what I mean by the law " (p. 249, per O. W. Holmes, in 1897), and with the suggestion of Jerome Frank (p. 255) that there should be " special training in fact-finding, evaluation of prejudice, psychology of witnesses, both for trial judges and prospective jurors " rather than merely in legal principles. Also ch. 31, " Legal Ideals, Public Policy, and the Practical Lawyer," considers, *inter alia*, the problem of Welfare State legislation and notes the consequent reduction of the sphere of " lawyers' law." Again, the deceptive ideal of a codified legal system, held by many practitioners, is exposed in ch. 32, and Corporate Personality and Legal Practice is considered in ch. 33. These examples have been selected as having some relevance to English lawyers, but they are, of course, of universal application. This last is the value and interest of all the contents, which include particularly absorbing analyses of Communist, Fascist and Catholic legal theory. However, it is repeated that this treatise is recommended only to those who do not confine their interests to the needs of the moment and who are prepared to read with their full critical faculties. These will have their reward.

Famous Criminal Cases. No. 6. By RUPERT FURNEAUX. pp. 256. 1960. London: Odhams Press, Ltd. £1 1s. net.

Here are collected a dozen major murder trials held in 1959 (besides some brief accounts of notorious robberies), each with its own peculiarity and special dramatic appeal, which are brought out by the author in a craftsmanlike fashion: Donald Hume, Ernest Fantle, Henry Marwood, Sergeant Marymont, Cavan Malone, Guenther Podola, Edith Chubb, Sergeant Roy Hicks, George Carter, Michael Dowdall, Patrick Byrne, Terence George Cooney, Joseph Chrimes. They read like stories smoothly related by a skilful writer of fiction whose words convey the din of violence, the impulse of passion, the clashes in court. The comments are few but caustic, the treatment being objective throughout.

The author, however, is caught out in what seems an important inconsistency. Thus on p. 191 one reads: " To kill during the course of a burglary is still a capital crime, yet the knowledge that, if detected, they will hang, does not seem to deter these petty thugs." Only five pages later he writes: " It would be a bad day for Britain if capital punishment for such crimes was abolished." Furthermore, he compares the trial of Sergeant Marymont, by an American court on British soil, with that of Sergeant Emmett by a British court in Germany—forgetting that Germany was ignominiously defeated and has been justly occupied, unlike Britain. However, in the words of Lord Goddard, " the causes of crime are still there. They are the desire for easy money, greed, passion, lust and cruelty." One should add that these vices may be sparked off by drink, and that two-thirds of murderers are insane. A novel aspect of murder is that it sometimes results from fights between gangs of reckless youths who use knives instead of bare fists. Again, it seems that by driving prostitution underground, the Street Offences Act has indirectly contributed to the increase in crime, " for the prostitute serves as a safety-valve."

The police come in for some criticism, in that there is on the authority of Devlin, L.J., a tendency for them to press too hard against someone they believe to be guilty. The author comments: " Ninety-nine times out of a hundred they have the right man, but there is a danger, with a person of weak intellect, that such methods may lead to false confessions." Moreover, it is urged that when a suspect offers to make a statement he should write it himself rather than sign what he is alleged to have dictated to a policeman. Incidentally, Dr. Camps—the well-known pathologist—claims to have performed more than 60,000 post-mortems, that is, an average of between five and six every day during the past thirty years! As may be imagined, this is a most absorbing book.

BOOKS RECEIVED

The Society of Clerks of Valuation Panels: The Review. Vol. 22. pp. 22. December, 1960. Winchester: The Society of Clerks of Valuation Panels. 2s. net.

Green's Death Duties. Third (cumulative) Supplement to Fourth Edition. By D. J. LAWDAY, LL.B. (Lond.), of Gray's Inn, Barrister-at-Law, and of the Estate Duty Office, and E. J. MANN, LL.B. (Lond.), of the Estate Duty Office. pp. xii and 92. 1960. London: Butterworth & Co. (Publishers), Ltd. 11s. post free.

The Common Law. By S. K. DAS, M.A., LL.B. (Cantab.), of Gray's Inn, Barrister-at-Law. pp. 28. 1960. Singapore: Malayan Law Journal, Ltd. 5s. 10d. net.

The Nuffield Foundation. Fifteenth Report. Report for the year ended 31st March, 1960. pp. xiii and (with Index) 144.

The Truck System, including a History of the British Truck Acts, 1465–1960. By GEORGE W. HILTON, Assistant Professor of Economics, Stanford University, U.S.A. pp. ix and (with Index) 166. 1960. Cambridge: W. Heffer & Sons, Ltd. £1 1s. net.

Restoring Democracy in Germany. The British Contribution. By RAYMOND EBSWORTH. With a Foreword by ROBERT BIRLEY. pp. xiv and (with Index) 222. 1960. London: Stevens & Sons, Ltd. £1 10s. net.

Pension Book of Clement's Inn. Volume 78. Edited for the Selden Society by Sir CECIL CARR, K.C.B., Q.C., F.B.A. pp. lxvii and (with Index) 347. 1960. London: Bernard Quaritch. £3 13s. 6d. net.

Hill and Redman's Law of Landlord and Tenant. Thirteenth Edition. By W. J. WILLIAMS, B.A., of Lincoln's Inn, Barrister-at-Law, and Miss M. M. WELLS, of Gray's Inn, Barrister-at-Law. pp. ccxlv, 1424 and (Index) 64. 1960: Butterworth & Co. (Publishers), Ltd. £8 8s. net.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and, in general, full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

Court of Appeal

RATING: ART GALLERY: EXCLUSION OF PUBLIC FROM PART OF HEREDITAMENT: WHETHER ANY BENEFICIAL OCCUPATION

Clayton (Valuation Officer) *v.* Kingston-upon-Hull Corporation

Lord Evershed, M.R., Harman and Donovan, L.JJ.

10th November, 1960

Appeal from the Lands Tribunal.

Under an indenture of 9th December, 1919, the Ferens Art Gallery at Kingston-upon-Hull was held by Kingston-upon-Hull Corporation upon a valid charitable trust to permit it to be used and enjoyed by the citizens of the City and County of Kingston-upon-Hull and the public generally as an art gallery for the exhibition of works of art in perpetuity. About two-thirds of the gallery building was used for the display of works of art and was open daily to the public without charge; the remaining third of the building, to which the public were not admitted, was used as offices and store rooms and for purposes ancillary to the running of the gallery. The Lands Tribunal, affirming the decision of the local valuation court, held that the gallery was not rateable on the ground that there was no beneficial occupation of it, and for rating purposes the public were the occupiers. The valuation officer appealed. *Cur. adv. vult.*

LORD EVERSHED, M.R., said that if the matter were free from authority and could be judged by common sense and the ordinary usages of language, he would feel little doubt that the tests of "occupation" applicable in the case of a public park or a public open space would have little reference to a public art gallery controlled and managed as was the gallery in the present case. In answer to the question "By whom is this building occupied?" he would have thought that the sensible answer was that it was "occupied" by those whose function it was to maintain the building in the ordinary way as such and not the less so because during the specified hours of the daytime members of the public were admitted to look at the works of art displayed there. His lordship referred to the authorities, in particular, *Hare* v. *Putney Overseers* (1881), 7 Q.B.D. 223; *Lambeth Overseers* v. *London County Council* (the *Brockwell Park* case) [1897] A.C. 625; *Burnell* v. *Downham Market Urban District Council* [1952] 2 Q.B. 55—and said that, after paying due regard to the language and reasoning in the cases binding upon the Court of Appeal, in the end he had come to the same conclusion that, as he had stated at the beginning of the judgment, appeared to flow from the application of common sense and ordinary language. In his judgment, under the trusts declared of the art gallery the right of the public was not comparable to the "free and unrestricted user" by the public of an open space, and, accordingly, the corporation was the occupier of the gallery. Accordingly the gallery was not exempt from rating.

HARMAN, L.J., delivered a concurring judgment that the appeal should be allowed.

DONOVAN, L.J., dissenting, said that in his opinion the tribunal's decision that the public were in occupation of the hereditament was correct, and the appeal should be dismissed. He (his lordship) felt unable to distinguish the *Brockwell Park* decision, *supra*, except by tacitly accepting the valuation officer's principal contention, that there could not be occupation of a building by the public where management and control of it was in some other party. He (his lordship) did not believe that contention to be sound. It would otherwise have provided a very short cut to the decisions in *Liverpool Corporation* v. *West Derby Union* (1905), 92 L.T. 467, and *Trustees of Sir John Soane's Museum* v. *St. Giles Vestry* (1900), 83 L.T. 248, which the courts deciding those cases could hardly have missed.

Appeal allowed. Leave to appeal.

APPEARANCES: *W. Roots*, Q.C., and *Raymond Phillips* (*Solicitor of Inland Revenue*); *Peter Rawlinson*, Q.C., and *J. P. Harris* (*Town Clerk*, Hull).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law] [2 W.L.R. 1

Chancery Division

CIVIL AND CRIMINAL PROCEEDINGS RAISING SUBSTANTIALLY SAME ISSUE: WHETHER JURISDICTION TO RESTRAIN CRIMINAL PROCEEDINGS

Thames Launches, Ltd. *v.* Trinity House Corporation (Deptford Strond)

Buckley, J. 29th November, 1960

Motion.

On 13th April, 1960, the plaintiffs issued an originating summons in the Chancery Division of the High Court which raised certain questions on the construction of the Pilotage Act, 1913, and in particular of ss. 11 and 43 of that Act. On 21st October, 1960, two summonses against an employee of the plaintiffs were issued out of the Thames Metropolitan Magistrates' Court, on informations laid by an employee of the defendants acting in the course of his duties and as their agent, alleging that he had committed offences under ss. 11 and 43 of the Act on 18th May, 1960. The two summonses in the magistrates' court raised substantially the same questions of law as were raised by the originating summons in the High Court. The plaintiffs moved the High Court for an injunction to restrain the defendants from further proceeding on the two summonses in the magistrates' court until the final determination of the matter of construction raised by the originating summons.

BUCKLEY, J., said that where matters involving substantially the same issues were raised in civil and, at a later stage, in criminal proceedings, the court could restrain the prosecutors from continuing the criminal proceedings until the civil proceedings had been decided. This jurisdiction was one which must be exercised with the greatest care. The court must be satisfied that to allow the criminal proceedings to be proceeded with would be vexatious. It was vexatious if somebody instituted proceedings to obtain relief in respect of a particular subject-matter where exactly the same issue was raised by his opponent in proceedings already instituted in another court in which he was not the plaintiff but the defendant. There might be questions of fact which might have to be decided by the magistrates' court which did not arise in the Chancery proceedings; but the substantial point in these proceedings was the same. In those circumstances, the right course was to grant an injunction restraining the defendants from proceeding on the summonses in the magistrates' court, until the determination of the questions raised by the originating summons or until further order.

APPEARANCES: *L. A. Blundell*, Q.C., and *K. R. Bagnall* (*J. A. & H. E. Farnfield*); *J. V. Naisby*, Q.C., and *Gerald Darling* (*Freshfields*).

[Reported by Miss V. A. MOXON, Barrister-at-Law] [2 W.L.R. 16

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(*continued on p. xix*)

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VARIATION OF TRUST: APPROVAL ON BEHALF OF PATIENT BY MASTER IN LUNACY: COSTS

In re **Sanderson's Settlement Trusts**

Pennycuick, J. 6th December, 1960

Adjourned summons.

The Master in Lunacy approved on behalf of a patient, under s. 1 (3) of the Variation of Trusts Act, 1958, an arrangement varying the trusts of a settlement in which the patient had a contingent interest. Subsequently, on an application under s. 1 (1), the court approved the arrangement, subject to a slight amendment which counsel for the patient had been authorised by the Court of Protection to accept, on behalf of infant respondents and all other unborn and unascertained persons who might become interested under the settlement.

PENNYCUICK, J., said that he would approve the arrangement as slightly amended, on behalf of the infant respondents and all other unborn and unascertained persons who might become interested and he would direct that all costs, including the costs in the Court of Protection, be paid out of the trust estate.

APPEARANCES: *W. S. Wigglesworth, F. G. King* and *F. Gwyn Rees* (*Biddle, Thorne, Welsford & Barnes*); *J. A. Wolfe* (*Official Solicitor*).

[Reported by Miss M. G. THOMAS, Barrister-at-Law] [1 W.L.R. 36

Queen's Bench Division

DANGEROUS DOG: BY WHOM COMPLAINT SHOULD BE MADE

Smith *v.* Baker

Lord Parker, C.J., Ashworth and Elwes, JJ.

8th November, 1960

Case stated by East Kent quarter sessions appeal committee sitting at Canterbury.

On a complaint by a police officer under s. 2 of the Dogs Act, 1871, a dog which had attacked and bitten a seven-year-old boy was ordered to be destroyed. The owner of the dog appealed, contending that a complaint under that section, not being a criminal cause or matter, was not, by reason of ss. 45 (2) and 46 (3) of the Magistrates' Courts Act, 1952, and r. 4 (2) of the Magistrates' Courts Rules, 1952, properly laid by the police officer but should be made by the person aggrieved.

LORD PARKER, C.J., said that "complaint" in s. 2 of the Act of 1871 was unqualified as to who the complainant should be. It did not say "by a person aggrieved." It was intended to be absolutely at large. The truth of the matter was that the police in the majority of cases were the proper people to lay the complaint. It was a complaint brought in the public interest and for the protection of the public. The appeal should be dismissed.

ASHWORTH and ELWES, JJ., agreed. Appeal dismissed.

APPEARANCES: *N. R. Fox-Andrews*, Q.C., and *Henry Newman* (*Geoffrey B. Gush & Co.*, for *William Dawes & Co.*, Ashford, Kent); *Edward Gardner*, Q.C., and *B. R. Clapham* (*Sharpe, Pritchard & Co.*, for *N. K. Cooper*, Maidstone).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] [1 W.L.R. 38

Probate, Divorce and Admiralty Division

HUSBAND AND WIFE: MAINTENANCE: JUSTICES: PREVIOUS EXPERIENCE OF PROCEEDINGS BETWEEN PARTIES

Thomas *v.* Thomas

Lord Merriman, P., and Cairns, J. 7th November, 1960

Appeal from magistrates.

On making a postponed commitment order against a husband in respect of arrears due under a maintenance order, the magistrates held that the husband's failure to comply with the maintenance order was due to his wilful refusal and culpable neglect. They took the view that, in reaching their decision, they were entitled to have regard to their experience in dealing with these parties over the preceding five years, which had shown the magistrates that, if pressure were brought to bear, the husband made an effort to comply with the order. The husband appealed by case stated against the postponed commitment order, on the question whether the magistrates were entitled to use their previous experience in dealing with these parties.

LORD MERRIMAN, P., said that he did not propose to make any general pronouncement about the rights of magistrates to use or not to use their own personal experience in dealing with a case that came before them. The crucial point of the present case was the phrase in the case stated by the magistrates that their experience had shown that, if pressure were brought to bear, the husband made an effort to comply with the order. That was one of the reasons why the magistrates made the commitment order. There was, however, no record of that particular pressure being brought to bear at all. Moreover, whatever it was that the magistrates were referring to as putting pressure on this husband as the result of which he paid, that was never put to the husband in such a way that he could answer it. The magistrates were not entitled to rely as much as they did for their decision on their previous experience of dealing with this husband. There must be a re-hearing.

CAIRNS, J., delivered a concurring judgment.

APPEARANCES: *R. G. Hamilton* (*Robbins, Olivey & Lake*, for *E. B. Kendall & Rigby*, Liverpool); *F. D. Paterson* (*Marris & Shepherd*, for *David Carr & Roe*, Birkenhead).

[Reported by D. R. ELLISON, Esq., Barrister-at-Law] [1 W.L.R. 1

"THE SOLICITORS' JOURNAL," 5th JANUARY, 1861

ON the 5th January, 1861, THE SOLICITORS' JOURNAL told the story of a jury locked up at York: "It is stated that the jury did not fare so badly as refractory jurymen generally do—that they had the advantage of gas and fire, and were kindly supplied by the High Sheriff with tea. Notwithstanding these concessions . . . the feelings of the jurymen may well be imagined, locked up, as it is stated they were, through the obstinacy of an ignorant and prejudiced foreman. It is rumoured that their remarks . . . were by no means courteous, and that when he made preparations for a comfortable night by reclining on a couple of chairs and commenced eating some monster sandwiches, evidently provided for such a contingency, their indignation reached a climax. The night became bitterly cold, and to keep themselves warm the prisoners had to stamp about the room . . . The colder it grew, the more frantic were the jurymen and the stronger their denunciation of their torturer, who was gradually subsiding into a slumber, betraying symptoms of asthmatic affection. Here was an opportunity for revenge! Accordingly some paper was ignited and whenever the foreman slumbered he was smoked into a severe fit of coughing. But the fire burnt low and theatened to expire—and towards dawn the cold became so severe that longing glances were cast at the books, bookcases and massive table. Fuel was the great want and fortunately a deal box was espied in a corner. It was immediately smashed open and disclosed a complete set of burglar's instruments—ready for a case which was to come on next day. This served again to kindle the fire, and the jury managed to exist till morning, when they were discharged; not, however, until they had heard themselves roundly abused by the county policeman to whom the box belonged."

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

PROGRESS OF BILLS

In Committee:—

Weights and Measures Bill (H.L.) [21st December.

HOUSE OF COMMONS

PROGRESS OF BILLS

Read First Time:—

Consolidated Fund Bill [H.C.] [20th December.

To apply a sum out of the Consolidated Fund to the service of the year ending on the thirty-first day of March, one thousand nine hundred and sixty-one.

Crofters (Scotland) Bill [H.C.] [21st December.

To make fresh provision with respect to the reorganisation, development and regulation of crofting in the crofting counties of Scotland, to authorise the making of grants and loans for the development of agricultural production on crofts and on holdings comparable in value and extent to crofts; and for purposes connected with the matters aforesaid.

Sheriffs' Pensions (Scotland) Bill [H.C.] [21st December.

To amend the law with respect to the pensions attributable to the office of sheriff and salaried sheriff-substitute, to regulate the age of retirement from such offices and to regulate the time at which payment may be made of those pensions and of the salaries attaching to the said offices.

White Fish and Herring Industries Bill [H.C.] [21st December.

To make further provision for financial assistance for the white fish and herring industries (including advances to the White Fish Authority).

Read Second Time:—

Human Tissue Bill [H.C.] [20th December.

Read Third Time:—

Betting Levy Bill [H.C.] [20th December.

STATUTORY INSTRUMENTS

Arsenic in Food (Scotland) Amendment Regulations, 1960. (S.I. 1960 No. 2344 (S. 126).) 5d.

Betting (Bookmakers' Agents) Regulations, 1960. (S.I. 1960 No. 2333.) 5d. See p. 21, *post*.

Betting (Licensed Offices) Regulations, 1960. (S.I. 1960 No. 2332.) 5d. See p. 21, *post*.

Bills of Sale (Local Registration) Rules, 1960. (S.I. 1960 No. 2326 (L. 21).) 5d. See 104 SOL. J. 1082.

Census of Distribution (1962) (Restriction on Disclosure) Order, 1960. (S.I. 1960 No. 2364.) 5d. See p. 14, *ante*.

Central Fire Area Administration Amendment Scheme Order, 1960. (S.I. 1960 No. 2345 (S. 127).) 6d.

Charities (Exception of Voluntary Schools from Registration) Regulations, 1960. (S.I. 1960 No. 2366.) 4d. See p. 21, *post*.

Charities (Statement of Account) Regulations, 1960. (S.I. 1960 No. 2425.) 5d. See p. 21, *post*.

County Court Districts (Harlow) Order, 1960. (S.I. 1960 No. 2329.) 5d. See 104 SOL. J. 1092.

County Court Districts (Nantwich and Tadcaster) Order, 1960. (S.I. 1960 No. 2330.) 5d. See 104 SOL. J. 1098.

County Courts (Bankruptcy and Companies Winding-up Jurisdiction) (Harlow) Order, 1960. (S.I. 1960 No. 2393.) 4d. See p. 21, *post*.

Criminal Appeal (No. 2) Rules, 1960. (S.I. 1960 No. 2325 (L. 20).) 5d. See 104 SOL. J. 1081.

Cutlery and Stainless Steel Flatware Industry (Scientific Research Levy) Order, 1960. (S.I. 1960 No. 2384.) 6d.

Firemen's Pension Scheme (No 2) Order, 1960. (S.I. 1960 No. 2385.) 5d.

Furness Water Board Order, 1960. (S.I. 1960 No. 2350.) 1s. 2d.

General Grant (Scotland) Order, 1960. (S.I. 1960 No. 2324 (S. 125).) 4d.

Grants and Rates (Transitional Adjustments) Regulations, 1960. (S.I. 1960 No. 2293.) 5d.

Income Tax (Purchased Life Annuities) (Amendment) Regulations, 1960. (S.I. 1960 No. 2308.) 4d.

Lancaster Water Order, 1960. (S.I. 1960 No. 2311.) 6d.

Legal Aid (General) (Amendment No. 4) Regulations, 1960. (S.I. 1960 No. 2369.) 5d. See 104 SOL. J. 1081.

Local Government (Compulsory Purchase) Regulations, 1960. (S.I. 1960 No. 2284.) 5d.

London Traffic (Prescribed Routes) (Wimbledon) Regulations, 1960. (S.I. 1960 No. 2321.) 5d.

London Traffic (Prohibition of Waiting) (Hoddesdon) Regulations, 1960. (S.I. 1960 No. 2319.) 5d.

London Traffic (Prohibition of Waiting) (Leatherhead) Regulations, 1960. (S.I. 1960 No. 2320.) 5d.

Mental Health (Scotland) Act, 1960 (Appointed Day) Order, 1960. (S.I. 1960 No. 2296 (S. 124).) 4d.

Motor Vehicles (Driving Licences) (Amendment) (No. 2) Regulations, 1960. (S.I. 1960 No. 2336.) 5d. See p. 21, *post*.

National Assistance (Determination of Need) Amendment Regulations, 1960. (S.I. 1960 No. 2395.) 5d.

These regulations, coming into operation on 3rd April, 1961, provide for increases in the weekly sums allowed for requirements other than rent, for the purpose of determining the need of applicants for assistance under the National Assistance Act, 1948.

National Gallery (Lending outside the United Kingdom) (No. 3) Order, 1960. (S.I. 1960 No. 2262.) 4d.

National Health Service (General Medical and Pharmaceutical Services) Amendment (No. 2) Regulations, 1960. (S.I. 1960 No. 2367.) 6d.

National Health Service (General Medical and Pharmaceutical Services) (Scotland) Amendment Regulations, 1960. (S.I. 1960 No. 2407 (S. 129).) 8d.

National Insurance Act, 1960 (Commencement) Order, 1960. (S.I. 1960 No. 2421 (C. 25).) 5d.

Opencast Coal (Annual Value and Other Land) (Variation) (No. 3) Regulations, 1960. (S.I. 1960 No. 2394.) 5d.

Parking Places (St. Pancras) (No. 1) Order, 1960. (S.I. 1960 No. 2322.) 1s. 5d.

Performing Right Tribunal (Amendment) Rules, 1960. (S.I. 1960 No. 2428.) 4d.

These rules delete references to the obsolete address of the office of the Performing Right Tribunal from the rules governing the procedure before the Tribunal. The new address is given at 104 SOL. J. 1080.

Police (No. 2) Regulations, 1960. (S.I. 1960 No. 2343.) 5d.

Police (Scotland) Amendment (No. 3) Regulations, 1960. (S.I. 1960 No. 2404 (S. 128).) 5d.

Purchase Tax (No. 5) Order, 1960. (S.I. 1960 No. 2351.) 5d.

Rules of the Supreme Court (No. 4), 1960. (S.I. 1960 No. 2327 (L. 22).) 6d. See 104 SOL. J. 1081.

Rules of the Supreme Court (No. 5), 1960. (S.I. 1960 No. 2328 (L. 23).) 6d. See 104 SOL. J. 1082.

Skimmed Milk with Non-Milk Fat Regulations, 1960. (S.I. 1960 No. 2331.) 8d.

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Farnham.—GERMAN, ADDY & CO. (Est. 1903). Chartered Auctioneers and Estate Agents, Surveyors and Valuers, 111 West Street. Tel. 5283/4.

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Godalming.—H. B. BAVERSTOCK & SON, Chartered Auctioneers and Estate Agents, Estate Offices. Tel. 1722 (5 lines).

Guildford.—MANN & CO., Est. 1891, 22 Epsom Road. Tel. 62911/2. Offices throughout West Surrey.

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Guildford.—WHITEHEAD & WHITEHEAD, amal. HEWETT & LEE, 144 High Street. (Tel. 2811/2).

Haslemere.—H. B. BAVERSTOCK & SON, Chartered Auctioneers and Estate Agents, 20 High Street. Tel. 1207.

Haslemere and Hindhead.—CUBITT & WEST. Tel. Haslemere 2345/6/7, Hindhead 63. Valuers, Surveyors, Estate Agents.

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Sutton.—IDRIS JONES & PARTNERS, F.R.I.C.S., F.A.I., 22 The Arcade, Sutton. VIGilant 0182; and at 300 Abbey House, Westminster.

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Weybridge and District.—WATERER & SONS, Chartered Auctioneers and Estate Agents, Surveyors, etc. Tel. 3838/9.

(*continued on p. xx*)

SURREY (*continued*)

Woking.—HOAR & SANDERSON, F.V.I. Tel. 3263/4. Ten associated Surrey offices.

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Woking.—HOLDRAM, CLARKE & EDGLEY, Chartered Surveyors. Tel. 3419; and at Guildford.

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Bexhill-on-Sea.—JOHN BRAY & SONS (Est. 1864), Estate Agents, Auctioneers and Valuers, 1 Devonshire Square. Tel. 14.

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Bexhill-on-Sea and Little Common.—RICHES & GRAY (Est. 1863), Chartered Auctioneers and Estate Agents, 25 Sea Road, Bexhill-on-Sea. Tel. 34/5. And at 25 Cooden Sea Road, Little Common. Tel. Cooden 2939.

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Brighton.—H. D. S. STILES & CO., F.R.I.C.S., F.A.I. (special rating diploma), 6 Pavilion Buildings. Tel. Brighton 23244 (4 lines). 10 King's Bench Walk, Temple E.C.4. Tel. Central 5356. 3 The Steyne, Worthing. Tel. Worthing 9192/3.

Brighton.—FRANK STONE & PARTNERS, F.A.L.P.A., 84 Queen's Road. Tel. Brighton 29252/3.

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Eastbourne.—FRANK H. BUDD, LTD., Auctioneers, Surveyors, Valuers, 1 Bolton Road. Tel. 1960.

Eastbourne.—A. C. DRAYCOTT, Chartered Auctioneers and Estate Agents, 12 Gildredge Road. Tel. Eastbourne 1285.

Eastbourne.—HEFFORD & HOLMES, F.A.I., Chartered Auctioneers and Estate Agents, 51 Gildredge Road. Tel. Eastbourne 7840.

Eastbourne.—OAKDEN & CO., Estate Agents, Auctioneers and Valuers, 24 Cornfield Road. Est. 1897. Tel. 1234/5.

Eastbourne and District.—FARNHAM & CO., Auctioneers, Estate Agents and Valuers, 6 Terminus Road, Eastbourne. Tel. 4433/4/5. Branch at 87 Eastbourne Road, Lower Willingdon, and 4 Grand Parade, Polegate.

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East Grinstead.—TURNER, RUDGE & TURNER Chartered Surveyors. Tel. East Grinstead 700/1.

Hassocks and Mid-Sussex.—AYLING & STRUDWICK Chartered Surveyors. Tel. Hassocks 882/3.

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Worthing.—HAWKER & CO., Chartered Surveyors, Chapel Road, Worthing. Tel. Worthing 1136 and 1137.

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Sheffield.—HENRY SPENCER & SONS, Auctioneers, 4 Paradise Street, Sheffield. Tel. 25206. And at 20 The Square, Retford, Notts. Tel. 531/2. And 91 Bridge Street, Worksop. Tel. 2654.

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Cardiff.—JNO. OLIVER WATKINS & FRANCIS, Chartered Auctioneers, Chartered Surveyors, 11 Dumfries Place. Tel. 33489/90.

Swansea.—E. NOEL HUSBANDS, F.A.I., 139 Walter Road. Tel. 57801.

Swansea.—ASTLEY SAMUEL, LEEDER & SON (Est. 1863), Chartered Surveyors, Estate Agents and Auctioneers, 49 Mansel Street, Swansea. Tel. 55891 (4 lines).

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Denbighshire and Flintshire.—HARPER WEBB & CO., (incorporating W. H. Nightingale & Son), Chartered Surveyors, 35 White Friars, Chester. Tel. 20685.

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Stopping up of Highways Orders, 1960:—

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County of Stafford (No. 16). (S.I. 1960 No. 2300.) 5d.
County of Wilts (No. 15). (S.I. 1960 No. 2340.) 5d.
County of Worcester (No. 15) Order, 1960. (S.I. 1960 No. 2314.) 5d.

Town and Country Planning (Grants) (Scotland) Regulations, 1960. (S.I. 1960 No. 2433 (S. 131.)) 6d.

Trustee Savings Banks (Amendment) Regulations, 1960. (S.I. 1960 No. 2335.) 5d.

Wages Regulation (Hollow-ware) (Amendment) Order, 1960. (S.I. 1960 No. 2368.) 5d.

Warble Fly (Dressing of Cattle) (England and Wales) (Amendment) Order, 1960. (S.I. 1960 No. 2392.) 5d.

Warble Fly (Dressing of Cattle) (Scotland) Amendment Order, 1960. (S.I. 1960 No. 2408 (S. 130).) 5d.

SELECTED APPOINTED DAYS

1960

December

30th — National Insurance Act, 1960, ss. 3, 6 (4) (part), Sched. VI (part).

Performing Right Tribunal (Amendment) Rules, 1960. (S.I. 1960 No. 2428.)

31st — Census of Distribution (1962) (Restriction on Disclosure) Order, 1960. (S.I. 1960 No. 2364.)

Opencast Coal (Annual Value and Other Land) (Variation) (No. 3) Regulations, 1960. (S.I. 1960 No. 2394.)

1961

January

1st — Aliens Order, 1960. (S.I. 1960 No. 2214.)

Betting and Gaming Act, 1960, Pt. II and Sched. VI, Pt. I; Pt. III; s. 26; s. 29 (1) and Sched. IV, in so far as they amend the Gaming Act, 1845, s. 11; s. 29 (2) and Sched. V, para. 4, in so far as they amend the Betting and Lotteries Act, 1934, ss. 23 (1), 24 (3), and the Small Lotteries and Gaming Act, 1956, s. 1 (3); s. 29 (3) and Sched. VI, Pt. II, in so far as they relate to the Gaming Act, 1845, and the Small Lotteries and Gaming Act, 1956 (Amendment) Act, 1959.

Building Societies (Authorised Investments) Order, 1960. (S.I. 1960 No. 2091.)

Charities Act, 1960, except ss. 1, 38, 47, Sched. I and Sched. VII, Pt. II (part).

Charities (Exception of Voluntary Schools from Registration) Regulations, 1960. (S.I. 1960 No. 2366.) See p. 21, *post*.

Charities (Statements of Account) Regulations, 1960. (S.I. 1960 No. 2425.) See p. 21, *post*.

Civil Aviation (Licensing) Act, 1960, s. 4.

Criminal Appeal (No. 2) Rules, 1960. (S.I. 1960 No. 2325.) See 104 Sol. J. 1081.

Factories Act, 1959, s. 1.

Factories (Cleanliness of Walls and Ceilings) Order, 1960. (S.I. 1960 No. 1794.)

Films Act, 1960.

Films (Registration) Regulations, 1960. (S.I. 1960 No. 2291.)

Legal Aid (General) (Amendment No. 4) Regulations, 1960. (S.I. 1960 No. 2369.) See 104 Sol. J. 1081.

Magistrates' Courts (Matrimonial Proceedings) Rules, 1960. (S.I. 1960 No. 2229 (L.19).)

Matrimonial Proceedings (Magistrates' Courts) Act, 1960.

National Health Service (General Medical and Pharmaceutical Services) Amendment (No. 2) Regulations, 1960. (S.I. 1960 No. 2367.)

Oil Burners (Standards) Act, 1960.

Petty Sessional Divisions (Devon) Order, 1960. (S.I. 1960 No. 2323.) See 104 Sol. J. 1092.

Registration of Title (Kent) Order, 1955. (S.I. 1955 No. 956), applicable to the whole of the County of Kent.

Slaughter of Animals (Prevention of Cruelty) Regulations, 1958 (S.I. 1958 No. 2166, as amended by S.I. 1959 No. 1493), reg. 5, in areas specified in S.I. 1960 No. 2154.

Slaughterhouses (Hygiene) Regulations, 1958. (S.I. 1958 No. 2168, as amended by S.I. 1959 No. 1543), Pts. II and III, regs. 19 (1), 25 (*f*) and 32, in areas specified in S.I. 1960 No. 2155.

Supreme Court Fees (Amendment) Order, 1960. (S.I. 1960 No. 2171.)

Wages Regulation (Baking) (England and Wales) (No. 2) Order, 1960. (S.I. 1960 No. 2295.)

Wages Regulation (Sugar Confectionery and Food Preserving) (No. 2) Order, 1960. (S.I. 1960 No. 2206.)

2nd — Bills of Sale (Local Registration) Rules, 1960. (S.I. 1960 No. 2326.) See 104 Sol. J. 1082.

County Courts (Bankruptcy and Companies Winding-up Jurisdiction) (Harlow) Order, 1960. (S.I. 1960 No. 2393.) See p. 21, *post*.

County Court Districts (Harlow) Order, 1960. (S.I. 1960 No. 2329.) See 104 Sol. J. 1092.

County Court Districts (Nantwich and Tadcaster) Order, 1960. (S.I. 1960 No. 2330.) See 104 Sol. J. 1098.

Foreign Compensation (Egypt) (Determination and Registration of Claims) (Amendment) Order, 1960. (S.I. 1960 No. 2418.)

Motor Vehicles (Driving Licences) (Amendment) (No. 2) Regulations, 1960. (S.I. 1960 No. 2336.) See p. 21, *post*.

Rules of the Supreme Court (No. 4), 1960. (S.I. 1960 No. 2327. See 104 Sol. J. 1081.

Rules of the Supreme Court (No. 5), 1960. (S.I. 1960 No. 2328.) See 104 Sol. J. 1082.

Wages Regulation (Perambulator and Invalid Carriage) Order, 1960. (S.I. 1960 No. 2263.)

Wages Regulation (Toy Manufacturing) Order, 1960. (S.I. 1960 No. 2250.)

6th — Wages Regulation (Hollow-ware) (Amendment) Order, 1960. (S.I. 1960 No. 2368.)

9th — Wages Regulation (Boot and Shoe Repairing) (Amendment) Order, 1960. (S.I. 1960 No. 2287.)

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K.B.E.

Sir KENNETH KENNEDY O'CONNOR, President, Court of Appeal for East Africa. Called by Gray's Inn, 1924, and took silk (Kenya) 1950.

C.B.E.

THOMAS ERNEST CHESTER BARRATT, Chief Commoner, City of London. Admitted 1927.

C.B.E. (*continued*)

SAMUEL HERBERT BROOKFIELD, Assistant Solicitor, Ministry of Housing and Local Government. Admitted 1929.

CYRIL GEORGE EDWARD DINGLE, Mayor of Wallasey. Admitted 1928.

JOSEPH EDWARD DE FREITAS. Admitted 1948.

EUGENE GORMAN, M.C., Q.C., Chairman, Commonwealth Dried Fruits Export Board (Australia).

THOMAS MERVYN JONES, Chairman, Wales Gas Board. Admitted 1936.

IAN ANDERSON MACAULAY, Clerk of Assize, Northern Circuit, Supreme Court of Judicature. Called by the Inner Temple, 1933.

GERSHOM STEWART. Called by the Inner Temple, 1934.

O.B.E.

Major PERCIVAL ROBERT ALLEN. Admitted 1926.

NORMAN RHIND BAIN, Crown Prosecutor and Crown Solicitor at Wanganui, New Zealand.

GODFREY ROLAND BOLSOVER. Admitted 1933.

MAX GRÜNHUT, lately Reader in Criminology, University of Oxford.

WILLIAM EDMUND AMES LEWIS, Senior Legal Assistant (Assistant Commissioner), Charity Commission. Called by the Inner Temple, 1935.

EDWARD WILLETT MACGOWAN, Secretary, Navy, Army and Air Force Institutes. Admitted 1937.

WALTER HAROLD MEREDITH, Official Receiver, Board of Trade.

RUDOLPH HOWARD MOORE, Clerk to Baildon Urban District Council.

ERNEST JAMES NEALE, Chairman, South Eastern Trustee Savings Bank. Admitted 1905.

DESMOND WEST EDMUND NELIGAN, Umpire under the National Service Act, 1948. Called by the Middle Temple, 1940.

SAM SCRUTTON RICHARDSON, Commissioner for Native Courts, Northern Region, Nigeria.

Miss EULALIE EVAN SPICER, Secretary, No. 1 (London) Legal Aid Area Committee, The Law Society. Admitted 1938.

WILLIAM HENRY WILLIAMS, Honorary Legal Adviser to the Commons, Open Spaces and Footpaths Preservation Society. Called by Lincoln's Inn, 1906.

O.B.E. (HON.)

ANTHONY PHILIP DE SOUSA, Law Clerk, Attorney-General's Chambers, Kenya.

M.B.E.

WALTER FREDERICK BIRD, lately Assistant Librarian, Bar Library, Royal Courts of Justice.

SIDNEY ARTHUR DURRANT, Superintendent, Land Charges and Agricultural Credit Department, H.M. Land Registry.

PERCY JAMES HAYDEN, lately Assistant Official Receiver, Board of Trade.

EDWIN ARTHUR OLDFIELD, Superintendent, Royal Courts of Justice.

GORDON DUFF POWELL, Legal Assistant, Ministry of Pensions and National Insurance. Admitted 1926.

HAROLD SHEPHERD, Secretary to the Law Society of Northern Rhodesia.

IQBAL SINGH, Legal Assistant in the former Somaliland Protectorate.

MARTIN ROBERT TOLLOW, Senior Executive Officer, Office of H.M. Procurator-General and Treasury Solicitor.

★ Classified Advertisements ★

PUBLIC NOTICES—INFORMATION REQUIRED—CHANGE OF NAME
3s. per line as printed

APPOINTMENTS VACANT—APPOINTMENTS WANTED—PRACTICES AND PARTNERSHIPS and all other headings
12s. for 30 words. Additional lines 2s. Box Registration Fee 1s. 6d. extra

Advertisements should be received by first post Wednesday for inclusion in the issue of the same week and should be addressed to THE ADVERTISEMENT MANAGER, SOLICITORS' JOURNAL, OYEZ HOUSE, BREAMS BUILDINGS, FETTER LANE, E.C.4. CHAncery 6855

PUBLIC NOTICES

NEW SCOTLAND YARD

ASSISTANT PROSECUTING SOLICITORS on permanent staff of Solicitor's Department. Age 24–40. Salary on appointment £950 to £1,135 according to age. On confirmation £1,300 at age 30, rising to £1,850. Non-contributory pension. Candidates who have passed their final examination but have not yet been admitted will be considered. Particulars from Secretary, Room 165 (LA), New Scotland Yard, S.W.1.

METROPOLITAN BOROUGH OF PADDINGTON

COMMON LAW MANAGING CLERK

(£1,C05–£1,185 per annum) (A.P.T. III) (starting salary according to experience)

The Council invite applications for this pensionable appointment. Knowledge and experience of litigation practice in the Magistrates and County Courts is necessary. Previous local government service not essential. 5-day week.

Applications stating age, qualifications, experience, posts held and names of two referees should reach me by 16th January, 1961. (A.514).

W. H. BENTLEY,
Town Clerk.

Town Hall,
Paddington Green, W.2.

THE LONDON COUNTY COUNCIL

invites applications for appointment as assistant solicitors (previous local government service not essential). Starting salary £990–£1,250 according to qualifications and experience. Clear run to £1,500 for capable man or woman, with good prospects of further promotions to posts carrying salaries in excess of £2,000 a year. Details and application form, returnable by 21st January, 1961, from Solicitor, (S/S/3249/1), County Hall, S.E.1.

LONDON COUNTY COUNCIL

Applications invited from men and women under 40 on 21st January, 1961, with several years' practical experience in a solicitor's office, for appointment as law clerk in the Legal and Parliamentary Department. Commencing salary according to ability and experience on a scale rising to £1,250. Promotion is open to higher paid posts. Compulsory superannuation scheme. Particulars and form (returnable by 21st January, 1961), from Solicitor, (S/S/3248/1), County Hall, S.E.1.

COUNTY BOROUGH OF TYNEMOUTH

ASSISTANT SOLICITOR

Applications invited for this post on Grade A.P.T. IV (£1,140–£1,310). Previous Local Government experience not essential. Canvassing will disqualify.

Applications, together with names of two referees, to reach me by 16th January, 1961.

FRED. G. EGNER,
Town Clerk.

14 Northumberland Square,
North Shields,
Northumberland.

BOROUGH OF MAIDENHEAD

LAW CLERK

Salary £815 rising by annual increments of £30 to £960 and subject to the conditions of the National Joint Council for Local Authorities relating to superannuation, leave, etc. Commencing salary according to ability. Local Government experience not essential but sound conveyancing knowledge necessary. Housing accommodation available and 50 per cent. contribution of removal expenses in appropriate cases; five day week. Application together with names of two referees to undersigned.

STANLEY PLATT,
Town Clerk.

Guildhall,
Maidenhead.

CRAWLEY URBAN DISTRICT
(Population 53,000)

ASSISTANT SOLICITOR

Assistant Solicitor required. Salary within A.P.T. Grade V (£1,310 per annum—£1,480 per annum) plus temporary local weighting of £45. National Conditions and Superannuation Acts apply. Assistance with provision of housing accommodation if required.

Previous local government experience not essential and applications from persons awaiting admission will be considered.

Applications stating age, qualifications, present position and giving details of experience with names of two referees to the undersigned by the 20th January, 1961.

R. W. J. TRIDGELL,
Clerk of the Council.

Robinson House,
Robinson Road,
Crawley.

COUNTY BOROUGH OF ROTHERHAM

ASSISTANT SOLICITOR

Applications are invited for this post. Salary Grade A.P.T. IV (£1,140–£1,310 p.a.). Local Government experience not essential. Men awaiting admission will be considered.

Applications with names and addresses of two referees should reach the undersigned not later than 18th January, 1961.

JOHN S. WALL,
Town Clerk.

Municipal Offices,
Rotherham.

THE RURAL DISTRICT COUNCIL OF GODSTONE

LEGAL ASSISTANT (Unadmitted)

Applications are invited for this appointment on Grade A.P.T. III (£960–£1,140 p.a.).

Candidates should have a thorough knowledge and good experience of conveyancing. Local Government experience is not essential.

Assistance given with housing. Post superannuable.

Applications stating age and experience, and naming two referees should reach the undersigned by 18th January, 1961.

M. HAWORTH,
Clerk of the Council.

Council Offices,
Oxted,
Surrey.
23rd December, 1960.

SOUTHERN ELECTRICITY BOARD

JUNIOR ASSISTANT SOLICITOR

Applications are invited for the post of Junior Assistant Solicitor on the staff of the Secretary and Solicitor to the Board. Those awaiting admission as solicitor will be considered. The commencing salary will be in accordance with Grade 5 of the N.J.C. Agreement for the Electricity Supply Industry, at present £1,020 × £30 – £1,140 proceeding, with development of the work and subject to satisfactory service, to Grade 6, at present £1,150 × £30 – £1,240, and will be subject to N.J.C. Conditions of Service. Applicants must have a sound knowledge of conveyancing and experience of court work would be an advantage.

The successful candidate will be required to contribute to the Electricity Supply (Staff) Superannuation Scheme.

Applications on forms obtainable from the Secretary, Southern Electricity Board, Bath Road, Littlewick Green, Maidenhead, Berks, to be returned not later than 23rd January, 1961.

REDDITCH URBAN DISTRICT COUNCIL
(Population 35,000)

APPOINTMENT OF DEPUTY CLERK AND SOLICITOR

Applications are invited for the above-mentioned appointment from solicitors with extensive experience. Salary £1,310–£1,546 p.a. according to experience.

Redditch is the largest urban district in Worcestershire and is rapidly developing. The appointment will provide wide and varied experience in local government law and administration.

Temporary housing accommodation will be available, if required, and reasonable removal expenses paid. A 5-day week is now being worked.

Applications stating full personal particulars and experience and qualifications, with the names of two referees, should be sent to me forthwith endorsed " Deputy Clerk."

W. IRVING WATKINS,
Clerk of the Council.

Council House,
Redditch.

METROPOLITAN BOROUGH OF POPLAR

LEGAL ASSISTANT

Applications are invited for this permanent appointment from solicitors of at least two years' standing. Salary within Grade A.P.T. V (£1,310–£1,480 per annum, plus £45 per annum London " Weighting ") of the National Scheme for Local Authorities' Administrative, Professional and Technical staffs. Commencing salary according to experience. Previous local government experience an advantage but not essential. Application forms and further particulars from the undersigned. Closing date 23rd January, 1961.

S. A. HAMILTON,
Town Clerk.

Poplar Town Hall,
Bow Road, E.3.
2nd January, 1961.

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CLASSIFIED ADVERTISEMENTS—*continued from p. xxi*

PUBLIC NOTICES—*continued*

BOROUGH OF CASTLEFORD

ASSISTANT SOLICITOR

Applications are invited for this appointment in the Town Clerk's Department. Commencing salary according to experience, within Grades A.P.T. III/IV (£960–£1,310). Previous local government experience desirable but not essential. Applications from newly qualified solicitors will be considered.

N.J.C. Service Conditions; superannuable; terminable on one month's notice either side. The successful applicant will be required to pass satisfactorily a medical examination.

Housing accommodation will be provided, if required, for successful married applicant.

Applications, on forms obtainable from me, to be returned not later than 9 a.m. on Thursday, 26th January, 1961.

Canvassing disqualifies.

ERNEST HUTCHINSON,
Town Clerk.

Town Hall,
Castleford.

BOROUGH OF ILKESTON

LEGAL ASSISTANT

Applications invited for above appointment. Salary Grade A.P.T. II (£815 to £960 p.a.). Duties include conveyancing and other legal and general work. Post superannuable, and subject to National Scheme of Conditions of Service, medical examination and one month's notice on either side. Housing accommodation available if person appointed resides outside the borough.

Applications, stating age, qualifications and experience, and naming two referees, to reach me not later than Monday, 23rd January, 1961. Canvassing disqualifies.

J. YATES,
Town Clerk.

Town Hall,
Ilkeston,
Derbyshire.

AMENDED ADVERTISEMENT

CITY OF LIVERPOOL

TOWN CLERK'S DEPARTMENT

ASSISTANT COMMON LAW CLERK

Salary—£935–£1,140 per annum
(A.P.T. Grade III)

Applications are invited for the above appointment. Consideration will be given to applicants with suitable academic qualifications or with five years' practical experience in the negotiation of claims and the conduct of litigation.

Application forms, returnable by Saturday, 14th January, 1961, and further particulars from the undersigned.

THOMAS ALKER,
Town Clerk.

Municipal Buildings,
Liverpool, 2. (J.6575).

APPOINTMENTS VACANT

LONDON.—Solicitor not over 30 required by The George Cohen 600 Group Limited as Assistant to the Secretary. The Company carry on an extensive international trade and has wide overseas interests.

*

The position therefore requires knowledge and experience of Commercial and Mercantile Law and the ability to draft commercial contracts.

*

Commencing salary £1,500 per annum for applicant with not less than four years' experience since qualifying. Contributory pension scheme, excellent prospects.

*

Applications to the Personnel Manager, The George Cohen 600 Group, Wood Lane, W.12.

THE UNIT CONSTRUCTION COMPANY LIMITED

Civil Engineers and Building Contractors invite applications for the position of

ASSISTANT SOLICITOR

in the newly-formed Legal Department at their Head Office at Feltham, Middlesex. Applicants should have Conveyancing experience and knowledge of Contract and Company work would be an advantage. Progressive salary commencing at £1,250 p.a. Contributory Pension Scheme and non-contributory Life Insurance. Bonus Scheme. This is an excellent opening for a young Solicitor wishing to make a career in the Building Industry. Applications giving full details to:

THE COMPANY SOLICITOR,
THE UNIT CONSTRUCTION CO., LTD.,
CENTRAL WAY,
FAGGS ROAD,
FELTHAM,
MIDDLESEX

SOLICITORS (Lincoln's Inn) require Managing Clerk with wide experience in legal or accountancy profession of trust work. —Write Box 443, Reynells, 44 Chancery Lane, W.C.2.

REQUIRED.—West Central London Practice requires expert conveyancer with extensive experience in all branches of conveyancing including claims for new leases under Landlord and Tenant Act, 1954. Applicant must be expert in his own sphere and capable of hard work. Exceptional salary to the right man.—Write Box 438, Reynells, 44 Chancery Lane, W.C.2.

OLD-ESTABLISHED Solicitors (Lewisham) require Assistant Solicitor (conveyancing and probate). Good prospect partnership (after probation) and succession. Newly-qualified considered if good articled experience.—Box 7285, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOLICITOR (41) in growing market and light industrial town seeks assistant and potential partner. Starting salary up to £900, increasing by £100 at end of first year. Newly-admitted man or woman eligible. Country cottage to rent available. Work includes conveyancing, probate, litigation, advocacy. Starting date: 3rd February to 1st April by arrangement.—Box 7286, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOLICITOR to Companies—City London. Write stating age, experience and if office required.—Box 7289, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

GEIGY (HOLDINGS) LIMITED

has a vacancy for a qualified

BARRISTER OR SOLICITOR

aged between 30 and 40, as an assistant to the Group Legal Officer. The position is one of considerable scope and offers good prospects of promotion for a man of the right calibre. Progressive salary and Contributory Pension Scheme.

Applications, giving details of age, experience, present salary, etc., should be addressed to:

THE SECRETARY,
GEIGY (HOLDINGS) LTD.,
RHODES, MIDDLETON,
MANCHESTER

CONVEYANCING Managing Clerk (admitted or unadmitted) required by West End firm. General work of wide variety, knowledge of Probate advantage but not essential. Excellent prospects. Suitable for ambitious, youngish man. Salary range £1,000–£1,250. Write with details in confidence.—Box 7268, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SIDCUP, Kent (close by station).—Shorthand typist with upwards of six years' conveyancing experience required. Salary according to experience.—Ring Footscray 8285.

REQUIRED by West End Solicitors, Probate Clerk (male or female) capable of undertaking Probate and administration work with the minimum of supervision. Pension scheme. No Saturdays.—Write with details of experience and salary required to Box F149, c/o Streets, 110 Old Broad Street, E.C.2.

OXFORD.—Conveyancing clerk, aged about 30, wanted in a small but expanding practice. Salary £1,000 p.a.—Box 7288, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CONVEYANCER, admitted or unadmitted required by City Solicitors. Must be capable of handling important matters with minimum supervision. A top rate salary (£1,600 or more according to experience and ability) and excellent prospects for the right man.—Box 7290, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

THE UNIT CONSTRUCTION COMPANY LIMITED

Civil Engineers and Building Contractors invite applications for the position of

CONVEYANCING MANAGING CLERK

in the newly-formed Legal Department at their Head Office at Feltham, Middlesex. Progressive salary commencing at £1,200 p.a. Contributory Pension Scheme and non-contributory Life Insurance. Bonus Scheme. Applications giving full details to:

THE COMPANY SOLICITOR,
THE UNIT CONSTRUCTION CO., LTD.,
CENTRAL WAY,
FAGGS ROAD,
FELTHAM,
MIDDLESEX

TEDDINGTON, Middlesex.—Solicitors require Cashier/Bookkeeper, if able to assist with outdoor work an advantage. Please write stating age, experience and salary required.—Box 7287, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

OXFORD. Ambitious recently admitted solicitor required to take charge of and develop new branch office with view to partnership after about eighteen months; no capital required.—Box 7273, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SWINDON. Conveyancing Clerk required capable of working without supervision. Salary by arrangement but not less than £900 p.a.—Box 7274, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

EXPERIENCED Probate Manager (30–45) required by Solicitors in Southern England. Wide and extensive knowledge of Trust administration and accounts with ability to work on own responsibility essential. Good progressive salary £1,000–£1,250 or commensurate with age and experience; Pension and Life Insurance Schemes; Assistance with housing and moving expenses: own Room and Secretary.—Write with full details to Box 7291, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

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NOTES AND NEWS

CHARITIES

Trustees or administrators of new charities to be registered under the Charities Act, 1960, other than educational charities, should apply for registration forms to the Charity Commission, 14 Ryder Street, St. James's, London, S.W.1. In the case of educational charities application should be made to the Legal Branch, Ministry of Education, Curzon Street House, Curzon Street, W.1.

The Charities (Statements of Account) Regulations, 1960 (S.I. 1960 No. 2425), in force on 1st January, 1961, prescribe the information to be included in statements of account transmitted to the Charity Commissioners or the Ministry of Education in accordance with the Charities Act, 1960, s. 8 (1). That sub-section, together with the above-named regulations, replaces the Charitable Trusts Amendment Act, 1855, s. 44.

The Charities (Exception of Voluntary Schools from Registration) Regulations, 1960 (S.I. 1960 No. 2366), in operation on 1st January, 1961, except from the obligation to register under the Charities Act, 1960, those voluntary schools which, being charities, have no permanent endowment other than their premises.

BETTING AND GAMING REGULATIONS

The Betting (Licensed Offices) Regulations, 1960 (S.I. 1960 No. 2332), coming into operation on 1st May, 1961, relate to licensed betting offices in England and Wales. Regulation 1 provides that they shall be closed between the hours of 6.30 p.m. and 7 a.m.; reg. 2 makes provision as to the display of notices and other written matter and signs on premises giving access to a betting office; reg. 3 makes provision as to the display of notices and other written matter and signs inside a betting office.

The Betting (Bookmakers' Agents) Regulations, 1960 (S.I. 1960 No. 2333), coming into operation on 1st June, 1961, prescribe the forms to be used in connection with the authorisation and registration of agents by bookmakers and the Racecourse Betting Control Board under the Betting and Gaming Act, 1960, s. 3.

LICENSING OF DRIVERS

The Motor Vehicles (Driving Licences) (Amendment) (No. 2) Regulations, 1960 (S.I. 1960 No. 2336), coming into operation on 2nd January, 1961, amend the Motor Vehicles (Driving Licences) Regulations, 1950, by substituting for reg. 5 (which prescribes the diseases and disabilities in respect of which persons are precluded from claiming driving tests) a new regulation which prescribes the diseases and disabilities which are to have this effect in the future. The principal change made by the regulation is that the following new diseases and disabilities are prescribed—

(*a*) mental disorder, as defined by the Mental Health Act, 1959, for which the applicant for the licence is liable to be detained under that Act, or is receiving treatment as an in-patient in a hospital or mental nursing home, and

(*b*) severe subnormality, as defined by that Act, as a result of which the applicant is subject to guardianship under that Act, or is either resident in accommodation provided by, or is otherwise receiving care from, a local health authority.

HARLOW COUNTY COURT: JURISDICTION

By the County Courts (Bankruptcy and Companies Winding-up Jurisdiction) (Harlow) Order, 1960 (S.I. 1960 No. 2393), the Harlow County Court, set up by S.I. 1960 No. 2329, is excluded from having jurisdiction in bankruptcy and the winding up of companies, and its district is attached for that purpose to the Hertford County Court.

COLONIAL APPOINTMENTS

The following appointments are announced by the Colonial Office: Mr. H. B. S. BOLLERS, Senior Magistrate, British Guiana, to be Puisne Judge, British Guiana; Mr. M. T. MALONEY, Crown Counsel, Uganda, to be Crown Counsel (Senior), Aden; Mr. A. M. SKINNER, Chief Registrar, Northern Nigeria, to be Judge of the High Court, Northern Nigeria; Mr. G. P. CAMMIADE to be Magistrate, Turks and Caicos Islands; and Mr. J. N. GRANT-MORRIS to be Resident Magistrate, Tanganyika.

Societies

Wembley solicitors of the CENTRAL AND SOUTH MIDDLESEX LAW SOCIETY held a luncheon on 14th December, 1960, at the Century Hotel, Forty Lane, Wembley. Another luncheon at the same venue will be held on 8th March, 1961.

The society has received a message from George L. Craven, Bishop of Sebastopolis, Bishop Auxiliary of Westminster.

The first annual dinner of the BRITISH INSTITUTE OF INTERNATIONAL AND COMPARATIVE LAW will be held on 16th January, 1961, at 8 p.m. in the Inner Temple Hall. Sherry will be served at 7.30 p.m. The dinner will maintain the tradition established by the Grotius Society and for this reason will be called the Grotius Dinner of the British Institute of International and Comparative Law. The toast of the Institute will be proposed by The Lord Chancellor, The Right Honourable Viscount Kilmuir, P.C., G.C.V.O. The Right Honourable Lord Denning, P.C., Chairman of the Institute, will reply and propose a toast to the guests, to which Professor A. M. Donner, President of the Court of Justice of the European Communities, will respond.

The SOLICITORS' ARTICLED CLERKS' SOCIETY announce the following programme: Tuesday, 17th January: A provisional debate has been arranged with the L.C.C. Law School. Tuesday, 7th February: New member's evening and whist drive. Refreshments from 6 p.m. Monday, 13th February: Dance at the Metro Club, New Compton Street, London, W.C.1, from 8 p.m. until midnight. Tickets: 4s. members, 5s. guests. Tuesday, 28th February: Theatre party—tickets available soon. Tuesday, 7th March: Table-tennis tournament at The Law Society at 6 p.m. Refreshments from 6 p.m. Tuesday, 21st March: Evening at the Festival Hall. Details of all the above-named activities can be obtained from Michael Bibby at FLEet Street 1664 or ELMbridge 4328 (after 7 p.m.).

Professional Announcement

Mr. Frank Stimpson, of 179 Stanstead Road, Forest Hill, S.E. 23, has from 18th December, 1960, taken his son, Ian Frank Justice Stimpson, into partnership. The firm's title will now be Frank Stimpson & Son.

Obituary

Mr. MAXWELL CORNISH BATTEN, solicitor, of London, E.C.4, died on Christmas Day, aged 70. He was admitted in 1914.

Mr. JOHN GRAHAM, retired solicitor, formerly of London, E.C.2, died on 23rd December, aged 57. He was admitted in 1927.

Mr. JOHN GEORGE FRANKLIN SHERGOLD, Clerk to the Justices, County Borough of Bournemouth, died on 21st December, aged 47.

Wills and Bequests

Mr. ERNEST HARPER KEMPE, solicitor, of Shoreham-on-Sea, Sussex, left £193,265 net.

Mr. MARK LEMON, solicitor, of Finsbury Park and Southgate, London, left £70,809 net.

Mr. BERNARD PERCY WEBSTER, solicitor, of London, W.1, left £37,135 net.

PRACTICE DIRECTION

JUDGMENTS AND ORDERS DRAWN UP BY THE CHANCERY REGISTRARS

1. At the time of bespeaking an order the person bespeaking it shall lodge at the Registrars' Office, in addition to the documents necessary to enable the draft to be prepared, a statement containing—

(i) the names of all parties concerned,

(ii) (*a*) the names of their solicitors, if any, or (*b*) a statement that they are acting in person, and

(iii) their addresses for service.

2. (A) An order may be bespoken in a letter addressed to the Clerk to the Registrars, Chancery Registrars' Office, Royal Courts of Justice, Strand, London, W.C.2, and sent, properly stamped, through the post or delivered by hand together with all the necessary documents.

(B) Any documents required to be produced to a registrar or lodged at his office may be produced or lodged by post.

3. (A) The documents usually necessary to enable the draft of an order to be prepared are—

(i) the pleadings, summons, notice, or other document upon which it was made.

(ii) (*a*) The original writ, originating summons or other document originating the proceeding, or (*b*) the duplicate of the last order made in the proceedings.

(iii) All the appearances unless they have already been lodged in the chambers of the judge.

(iv) All the evidence that was before the court judge or master that made the order.

(v) The indorsed briefs of all counsel where the order was made in court.

(B) The person bespeaking an order shall immediately inform all other parties or their solicitors that they are required to lodge at the Registrars' Office such of the said documents as are in their possession.

4. (A) Whenever a registrar has no queries to raise on a draft he shall provisionally settle it and shall indorse it "Settled subject to objections by ——" naming the day seven days after the day on which he provisionally settled it.

(B) In the absence of any objection made on or before the day named the registrar shall cause the order to be engrossed.

(C) Any party or his solicitor that has an objection to the draft shall—

(i) so inform the registrar, on or before the day named, by letter stating the objection,

(ii) arrange an appointment to settle the draft within five days after the day named,

(iii) duly serve notice of the appointment at the address for service of all the other parties.

(D) In the computation of the periods above mentioned there shall be excluded Saturdays, Sundays, public holidays, and other days on which the offices of the Supreme Court are closed.

5. Whenever a registrar is of the opinion that the draft of an order requires to be settled before him in the presence of the parties or their solicitors, he shall indorse the draft "Settle before me." When a draft has been so indorsed the person having the carriage of the order shall arrange an appointment for the purpose of settling the draft.

6. (A) Whenever it shall be necessary or desirable to arrange an appointment before a registrar, that appointment shall be arranged for a day on which the registrar named in the margin of the order will, according to the rota, be in chambers.

(B) The person arranging the appointment may consult that registrar about the day for the appointment.

7. Whenever a draft of an order has been settled before a registrar and approved by the parties or their solicitors all parties or their solicitors shall signify their approval thereof by their signatures in pencil on the back of the indorsement thereof.

8. A registrar may if he thinks fit direct that parties or their solicitors shall attend before him on the passing of an order in lieu of directing that they attend before him on the settling of the draft. In that event his indorsement shall be "Pass before me."

9. (A) In accordance with the existing practice, an order may be engrossed without a draft having first been made, whenever a registrar is of the opinion that it is proper so to do.

(B) In that event such of the provisions of this direction as apply to a draft shall apply to that engrossment as if it were a draft in addition to those provisions that apply to an engrossment.

10. (A) Whenever the draft of an order is ready for perusal by the persons entitled to do so, a copy of the draft shall be sent by the registrar to each of those persons.

(B) When a party is acting by solicitors the copy shall be sent by ordinary post except as hereinafter directed.

(C) When a party is acting in person the copy shall be sent by registered A.R. post.

(D) With each copy so sent there shall be sent all other necessary and proper documents in the possession of the registrar, unless he shall direct the contrary.

(E) Whenever the engrossment of an order, or the duplicate thereof, is ready, it shall similarly be sent by post.

(F) Whenever a draft, engrossment, or duplicate is sent with a deed, probate, or other like document, it shall be sent by registered post.

11. Any fee that is required to be impressed on an engrossment before the order is passed shall be so impressed before the engrossment is lodged for passing.

12. In this direction "order" means "judgment or order."

13. This direction shall come into operation on 11th January, 1961.

J. B. H. WYMAN,
Chief Registrar,
Chancery Division.

21*st December*, 1960.

POINTS IN PRACTICE

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, London, E.C.4.

Wording of Assent

Q. By his will, dated 1st November, 1926, *A* appointed *B* and *C* to be his executors and gave, devised and bequeathed (*inter alia*) all his real property unto his wife, *B*. *A* died on 25th November, 1926, and probate of his will was on 16th February, 1927, granted to *B* and *C*. By an assent (endorsed on a certain indenture dated 18th December, 1920) *B* and *C* "did thereby as personal representatives assent to the devise in favour of the said *B* contained in the said will of all that messuage or dwelling-house, etc., for an estate in fee simple subject to the yearly rent of £6 5s. and to the covenants, conditions and agreements contained or referred to in the within-written indenture." You will note that the executors purport to "assent to the devise" in favour of *B*, and that the assent is not drawn in the usual form whereby personal representatives assent to the vesting of the property itself in the person entitled thereto. We shall be glad of your opinion as to whether or not the assent is good to pass the legal estate to *B* alone.

A. In order to pass a legal estate the only essentials of an assent are that it must be "in writing, signed by the personal representative, and shall name the person in whose favour it is given": Administration of Estates Act, 1925, s. 36 (4). If these three essentials are complied with, as they clearly were in the assent in question, which also specified the land, then the assent operates to vest the legal estate in the land to which it relates in the person named: Administration of Estates Act, 1925, s. 36 (2) (4). We consider that the assent in question operated to vest the legal estate in *B* alone despite the unusual wording.

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CLASSIFIED ADVERTISEMENTS—*continued from p. xxii*

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